147 U S 242

RECORD, CASE No. 13,655.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 102.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, AND WILLIAM BERNIER, PLAINTIFFS IN ERROR,

vs.

EDWARD BERNIER, MATILDA BERNIER ENDRISS, AND JOHN H. GOFF.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED SEPTEMBER 25, 1889.

the link on the baggage car, but the inequality in height of the two cars proved to be greater than he supposed. He admits that he could have ascertained the exact difference by stopping the engine, or by closer examination before he ordered the engine to move, and obviously, as other witnesses stated, he could have avoided all risk by making the coupling from the platform of the baggage car. He thoughtlessly ventured to stand on the ground and attempt the connection with a straight link which he ordinarily did not use in coupling cars of unequal height.

* * * * * * * * * * * *

"The plaintiff (page 242) was in the performance of his ordinary duties, independent of all interference, and, in fact, represented the defendant. In regard to third persons he would have been considered as acting for the defendant. The height of the cars was his own, and the consequences of it mistaken calculation he made in regard to the comparative he is alone responsible for."

Upon the strength of the foregoing authorities, which seem to cover every phase of this case, we respectfully submit that the finding and decree of the Circuit Court was correct and ought to be affirmed.

WELLS H. BLODGETT,
Attorney for Appellee.

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a STATE OF MICHIGAN:

Supreme Court. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,

vs.

ALFRED BERNIER, JOSEPH BERNIER, MARY BERNIER-ENDRESS, Matilda Bernier-Endress, Edward Bernier, and John H. Goff, Defendants.

Record.

Brennan & Donnelly, complainants' solicitors; Lawrence F. Bedford, of counsel; Geo. A. Cady, defendants' solicitor.

1 The Circuit Court for the County of Chippewa. In Chancery.

To the circuit court for the county of Chippewa, in chancery:

Humbly complaining, your orators, Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier, residents of said county of Chippewa, respectfully represents unto this honorable court—

1st. That on the 27th day of August, 1885, one Edward Bernier, of said county, filed in the office of the register of the land office in the district in which said county is situated his pre-emption claim and notice to the east half of the northeast quarter of section eight (8), town. forty-seven (47) north, range one (1) east, and deposited the necessary money and received from the register of the land office a proper certificate thereof; that subsequently the said Edward Bernier purchased from one Victor La Londe her right and title under a pre-emption certificate in and to the southwest quarter of the northwest quarter and lot number two (2) of section nine (9), said town. forty-seven (47) north, range one (1) east, and also three acres out of the southwest corner of the northwest quarter of northwest quarter of said section nine (9), all in said county of Chippewa.

2nd. That said deed from Victoria La Londe to said Edward Bernier was made October 11th, 1875; was made for a consideration of one hundred dollars and was duly recorded in the office of the register of deeds for said county, in Liber Five (5) of Deeds, page five hundred (500).

3rd. That said pre-emption was made under and by virtue of the provisions of the act of Congress in such cases made and provided.

4th. That subsequently and on or about the 17th day of June, 1876, the said Edward Bernier died intestate, leaving no widow surviving him, his wife having died on or about the 2nd of April, 1872, and leaving as his heirs surviving him Alfred Bernier, Joseph T. Bernier, Mary Bernier, now Mary Endress; Matilda Ber-

nier, now Matilda Endress, and Edward Bernier, who were minors under the age of twenty-one years, and your orators and under and by virtue of the act of Congress in such case made and provided the heirs-at-law of said Edward Bernier, deceased, became and were entitled to and did succeed to all the right of said Edward Bernier, deceased, under said pre-emption claim and became well entitled to all the rights, privileges, and title of said Edward Bernier, deceased, in and to said lands, and your orators entered upon, possessed, and enjoyed the same.

2 5th. That under the provisions of the act of Congress the said Edward Bernier was entitled to change the filing of his claim to said lands from a pre-emption claim to a homestead entry, and by complying with the requirements of the homestead law to have a patent issued therefor from the United States; that in pursuance of and in compliance with the provisions of the act of Congress said Edward Bernier changed the filing on said land to a homestead entry a short time before his death, and your orators, the complainants herein, proved up and commuted said homestead entry and in every respect complied with the requirements of the law with reference thereto, and became and were entitled to have a patent issued to them as provided by the act of Congress, which said patent should confer the title in fee to said lands upon "the heirs" of Edward Bernier, deceased; that whatever money it was necessary to pay for fees, charges, and expenses in making said change and procuring said patent were borne by your orators, the complainants herein.

6th. That on or about the 25th day of April, 1877, the United States issued a patent of said lands, but instead of issuing the same to "the heirs" of said Edward Bernier, deceased, the sa-e was issued to the "minor heirs" of Edward Bernier, deceased, by a mistake; that the same should have issued to "the heirs" of said Edward Bernier, deceased, which included your orators; that the giving of said patent to the "minor heirs" was without the knowledge, consent, or procurement of your orators and in violation of their legal and equitable rights in said lands and premises.

7th. That at the time thereof said Alfred Bernier, Joseph T. Bernier, Mary Bernier, now Mary Endress; Matilda Bernier, now Matilda Endress; and Edward Bernier were under the age of twenty-one years, and your orators, who are the remaining children of said Edward Bern-er, deceased, were over twenty-one years of age; that under the strict terms of said patent the title in fee in said lands was vested in said "minor heirs." Your orators charge that they have and hold the same subject to your orators' rights in said premises, as hereinafter set forth.

8th. Your orators further allege that all the steps taken for the changing of the filing on said land from a pre-emption to a homestead entry were done through an attorney-at-law, who was acting for the said Edward Bernier, and afterwards the said attorney, acting for said heirs of Edward Bernier, took all the steps in commuting said homestead entry and procuring said patent to said lands from the United States; that when he received said patent he supposed

the same ran to "the heirs" of Edward Bernier, deceased, and,
3 without examining the same or discovering the mistake, caused the same to be placed on record; that it was not until quite recently th-t any of the heirs discovered that the mistake had been made, and for many years prior to said discovery all the heirs, including said minor heirs, treated said lands as being the joint property of the heirs of Edward Bernier, including your orators, and one of your orators has resided continuously on said lands under an agreement with the heirs; but now, may it please the court, since the discovery of the mistake in said patent and only since these minor heirs pretend, hold out, and claim that they are the sole and only owners of said lands, and claim and pretend that your orators have no interest, right, or title therein, which said claims and pretenses are a fraud upon the rights of y-ur orators in the premises and work to their manifest wrong and injury, while in truth and in fact your orators are the own-rs each of an undivided one-tenth part of said lands, making in all an undivided one-half thereof; and although requested so to do, the said minor heirs refuse and neglect to make proper conveyance to your orators of their interest therein as of right they should, and refuse to acknowledge in any way your orators' rights in the premises.

9th. And your orators further allege that said Alfred Bernier on or about the 3rd day of December, 1885, and February 20th, 1886, made a colorable transfer by quitclaim deed of all his interest in said lands to John H. Goff, of said county; which said deeds are recorded in Liber Seventeen (17) of Deeds, of page one hundred and thirty (130), and in Liber Seventeen (17) of Deeds, on page one hundred and sixty-four (164), to which records your orators refer for greater certainty; but your orators allege that said transfers are merely colorable, and any interest which said Goff may have acquired thereby in said premises were acquired with the full knowledge of the right of yur orators in the premises and subject thereto, and therefore your orators make the said minor heirs and said John H. Goff defendants to this their bill of complaint.

10th. Your orators allege that the doings, claims, and pretenses of the said defendants in the premises are contrary to equity and good conscience and operate as a fraud upon the rights of your orators.

11th. Your orators further allege that on or about the 30th day of March, 1887, they conveyed to one Hoel D. Drains, of said county, all their interest in the lands, to wit, the west ten acres off the west side of the southwest quarter of the northwest quarter of section nine (9) and the east fractional half of the northeast quarter of section eight (8), all in town. forty-seven (47) north, range one (1) east, containing about seventy (70) acres, and being all the portion
4 of said lands, the title to which remained in the heirs of said Edward Bernier of said lands so pre-empted, but said deed to said Rains was solely in the interest and for the benefit of your orators, and to make a suit to be brought in their behalf in his name, but for the use and benefit of your orators, and since said conveyance said Rains has reconveyed to your orators and they are now

reinvested with their right and title to the undivided one-half of said premises — are entitled to enforce their rights in this suit. Said lands and premises are of the value of five thousand dollars and upwards, and are situated in said county of Chippewa.

Wherefore and inasmuch as your orators are without remedy at and by the strict rules of the common law and can only have relief in a court of equity, they pray:

A. This court will determine and decree your orators to be the rightful owners of the undivided one-half of the land and premises hereinbefore last described, and that said defendants may be declared and decreed to be holding the same under their said patent and deeds to said Goff in trust for your orators.

B. That the court will direct said defendants to convey to your orators the title to said undivided one-half, or, on refusal so to do, that the decree be so declared that upon the recording of the same it shall stand in lieu of a deed.

C. That said defendants may be enjoined from conveying or incumbering any or all of said lands, and that a temporary injunction be granted restraining such alienation or incumbering during the prendency of this suit.

D. That said defendants may full, true, and perfect answer make to this bill of complaint (without oath, answer under oath being hereby expressly waived), and that such other and further relief may be granted to your orators in the premises as shall be agreeable to equity and good conscience.

E. That the writ of subpœna may be issued to said defendants according to the rules and practice of this court.

And your orators will ever pray, etc.

GEORGE C. BERNIER,
his
WILLIAM x BERNIER,
mark.
C. D. BERNIER,
LOUIS G. BERNIER,
SAMUEL F. BERNIER,
By LAWRENCE F. BEDFORD, *Of Counsel,*
Complainants.

BRENNAN & DONNELLY,
Solicitors for Compl'ts.
LAWRENCE F. BEDFORD, *Of Counsel.*

5 STATE OF MICHIGAN, } ss:
County of Chippewa, }

Be it remembered that on this 1st day of July, 1887, before me, a notary public in and for said county, came George E. Bernier, who, being by me duly sworn, doth depose and say that he is one of the above-named complainants; that he has heard read and signed the foregoing bill of complaint and knows the contents thereof, and the same is true as he verily believes.

JOAN MORRISON,
Notary Public, Chippewa County, Michigan.

(Endorsed:) Filed July 1, 1887. Geo. W. Brown, register.

6 The Circuit Court for the County of Chippewa. In Chancery.

CALIXTE BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, WILLIAM BERNIER
vs.
EDWARD BERNIER, MARY ENDRESS, MATILDA ENDRESS, JOSEPH T. BERNIER, ALFRED BERNIER, JOHN H. GOFF.

At a session of said court held at the court-house, in the village of Sault Ste. Marie, on Friday, March 15, A. D. 1888.

Present: Jas. H. Steere, circuit judge.

In this cause application having been made to this court for leave to amend the bill of complaint filed herein, and said application having been duly heard, John C. Donnelly in behalf of complainants and Geo. A. Cady on behalf of defendants, it is now ordered by the court that said complainants have leave to file the amended bill proposed on payment of fifteen dollars costs to said defendants.

And it is further ordered, counsel for the respective parties consenting thereto, that the answer of the respective defendants heretofore filed to the original bill of complaint stand as answer to the amended bill, and that the replication thereto filed by said complainants stand as the replication to said answer to said amended bill of complaint.

J. H. STEERE,
Circuit Judge.

Countersigned:
G. L. TREMPE,
Deputy Register.

7 *Amended Bill.*

The Circuit Court for the County of Chippewa. In Chancery.

To the circuit court for the county of Chippewa, in chancery:

8 Humbly complaining, your orators, Calixte Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier, residents of said county of Chippewa, by this amended bill of complaint respectfully represent to this honorable court:

(1.) That on the 27th day of August, 1855, one Edward Bernier, of said county, filed in the register of the land office in the district in which said county is situated his pre-emption claim and notice to the east half of the northeast quarter of section 8, town. 47 north, range 1 east, and deposited the necessary money and received from the register of the land office a proper certificate thereof.

That subsequently the said Edward Bernier purchased from one Victoria La Londe her right and title under a pre-emption certificate in and to the southwest quarter of the northwest quarter of lot No. 2 of section 9, said town. 47 north, range 1 east, and also three acres out of the southwest corner of the northwest quarter of said section 9, all of said county of Chippewa.

(2.) That said deed from Victoria La Londe to said Edward Bernier was made Oct. 11th, 1875, for a consideration of one hundred dollars ($100.00) and it was duly recorded in the register of deeds for said county, Liber 5 of Deeds, page 500.

(3.) That on the 24th day of May, 1875, said Edward Bernier entered the said described lands as a homestead, under and according to the provisions of the act of Congress providing for the granting of homesteads to actual settlers, being sections two hundred and twelve (212) to two hundred and fifty-five (255), both inclusive, of existing land laws of the United States as prepared by authority of Congress under the direction of the "Commissioners on the
9 codification of existing laws relating to the survey and disposition of the public domain," all of which appears more fully and at large by the records of the General Land Office at Washington, certified copies of which will be produced and which, when produced and proved, your orators refer — for greater certainty.

(4.) That according to the provisions of said land laws said Edward Bernier was entitled to commute his homestead entry, and upon paying the minimum price for said lands as fixed by law and making due proof as required to obtain a patent therefor from the United States, without waiting for the period of five years required to obtain a patent therefrom for the completion of his homestead entry.

That upon the death of said Edward Bernier his heirs-at-law, to wit, his said children, became entitled under the provisions of said land laws to commute said homestead entry and obtain a patent therefor as above set forth.

(5.) That subsequently and on or about the 17th day of June, 1876, the said Edward Bernier died intestate, leaving no widow surviving him, his wife having died on or about the 2nd day of April, A. D. 1872, and leaving as heirs surviving him Alfred Bernier, Joseph T. Bernier, Mary Bernier (now Mary Endress), Matilda Bernier (now Matilda Endress), and Edward Bernier, who were minors under the age of twenty-one (21) years and your orators, and under and by virtue of the act of Congress in such cases made and provided the heirs-at-law of said Edward Bernier, deceased, became and were entitled to and did succeed to all the right of said Edward
10 Bernier, deceased, under said homestead entry, and became and were entitled to all the rights, privileges, and title of said Edward Bernier, deceased, in and to said lands, and your orators entered upon, possessed, and enjoyed the same.

That your orator Samuel F. Bernier, acting on behalf of all of said heirs and children, made the necessary proof and paid to the proper officer of the United States land office at Marquette the sum of one hundred and ninety-four dollars and fifty cents ($194.50), that being the sum total of the minimum price for said homestead as fixed by act of Congress, and received a certificate which entitled all of the heirs of said Edward Bernier, deceased, to a patent from the United States of said lands; that said money was paid by your orators, together with all fees, costs, charges, and disbursements in-

curred in said commutation, and no part thereof has been paid, repaid, or refunded to them by any person.

(6.) That your orators received no notice whatever nor did any of them receive any notice whatever from any source, person, office, or officer of the land office at Marquette or the General Land Office at Washington that there was any contest upon the question of their rights in said lands or that they were not entitled to have a patent issued to them as heirs of Edward Bernier, deceased, or that the certificate aforesaid issued in their behalf in the name of Samuel F. Bernier was not valid or was claimed to be invalid by any person, nor were your orators even notified that any proceeding was being taken or had for the cancellation or annulling of their certificate aforesaid, and if any such proceeding was had or taken the
11 same is void and of no effect in law, and your orators allege on information and belief that no such contest was ever made, and that of right said patent should have issued to the heirs of said Edward Bernier.

That under the provisions of the land laws the said minor heirs were not entitled to prove up and commute said homestead or receive a patent therefor to the exclusion of your orators.

(7.) That on or about the 25th day of April, 1877, the United States issued a patent of said lands, but instead of issuing the same to the heirs of said Edward Bernier, deceased, the same was issued to the minor heirs of Edward Bernier, deceased, by a mistake and in violation of the rights of your orators in the premises; that the same should have issued to the heirs of said Edward Bernier, deceased, which included your orators.

That the giving of said patent to the minor heirs was without the knowledge, consent, or procurement of your orators and in violation of their legal and equitable rights in said lands and premises.

(8.) That at the time thereof said Alfred Bernier, Joseph F. Bernier, Mary Bernier (now Mary B. Endress), Edward Bernier, and Matilda Bernier (now Matilda Endress), were under the age of twenty-one years, and your orators, who are the remaining children of said Edward Bernier, deceased, were over twenty-one years of age.

That under the strict terms of said patent the title in fee in said lands was vested in said minor heirs. Your orators charge
12 that they have and hold the same subject to your orators' rights in said premises as hereinafter set forth.

(9.) Your orators further allege that all the steps taken for the changing of the filing on said lands from a pre-emption to a homestead entry were done through an attorney-at-law who was acting for the said Edward Bernier, and afterwards the said attorney acting for said heirs of Edward Bernier took all the steps in commuting said homestead entry and procuring said patent to said lands from the United States.

That when he received said patent he supposed the same ran to the heirs of said Edward Bernier, deceased, and without examining the same or discovering the mistake caused the same to be placed on record; that it was not until quite recently that any of

the heirs discovered that the mistake had been made, and for many years prior to said discovery all of the heirs, including said minor heirs, treated said lands as being the joint property of the heirs of said Edward Bernier, including your orators, and one of your orators has resided continuously on said lands under an arrangement with the heirs.

But now, may it please the court, since the discovery of the mistake in said patent and only since these minor heirs pretend, hold out, and claim that they are the sole and only owners of said lands and claim and pretend that your orators have no interest, right, or title therein, which said claims and pretenses are a fraud upon the rights of your orators in the premises and work to their manifest wrong and injury, while in truth and in fact your orators are the owners each of an undivided one-tenth part of said lands,
13 making in all an undivided one-half thereof, and, although requested so to do, the said minor heirs refuse and neglect to make proper conveyance to your orators of their interest therein, as of right they should, and refuse to acknowledge in any way your orators' rights in the premises.

(10.) And your orators further allege that said Alfred Bernier, on or about the 3d day of December, A. D. 1885, and February 20th, 1886, made a colorable transfer by quitclaim deed of all his interest in said lands to John H. Goff, of said county, which said deeds are recorded in Liber Seventeen (17) of Deeds, on page one hundred and thirty (130), and in Liber 17 of Deeds, on page 164, to which records your orators refer for greater certainty; but your orators allege that said transfers are merely colorable, and any interest which said Goff may have acquired thereby in said premises were acquired with full knowledge of the right of your orators in the premises and subject thereto, and therefore your orators make the said minor heirs and said John H. Goff defendants to this their bill of complaint.

(11.) Your orators allege that the doings, claims, and pretenses of the said defendants in the premises are contrary to equity and good conscience and operate as a fraud upon the rights of your orators.

(12.) Your orators further allege that on or about the 30th day of March, A. D. 1887, they conveyed to one Hoel D. Rains, of said county, all their interests in the lands, to wit, the west ten acres of the west side of the southwest quarter of the northwest quarter of section nine (9) and the east fractional half of the northeast
14 quarter of section eight (8), all in town. forty-seven (47) north, range one (1) east, containing about seventy (70) acres, and being all the portion of the said lands, the title to which remained in the heirs of said Edward Bernier of said land so pre-empted, but said deed to said Rains was solely in the interest and for the benefit of your orators and to make a suit to be brought in their behalf in his name but for the use and benefit of your orators; and since said conveyance said Rains has reconveyed to your orators and they are now reinvested with their right and title to the undivided one-half of said premises and are entitled to enforce their rights in this suit. Said land and premises are of the value of twenty-five thousand dollars and upwards and are situated in said county of Chippewa.

Wherefore and inasmuch as your orators are without remedy at and by the strict rules of the common law and can only have relief in a court of equity, they pray:

(*a.*) This court will determine and decree your orators to be the rightful owers of the undivided one-half of the lands and premises hereinbefore described, and that said defendants may be declared and decreed to be holding the same under their said patent and deeds to said Goff in trust for your orators.

(*b.*) That the court will direct said defendants to convey to your orators the title to said undivided one-half, or, on refusal so to do, that the decree be so declared that upon the recording of the same it shall stand in lieu of a deed.

(*c.*) That said defendants may be enjoined from conveying or encumbering any or all of said lands, and that a temporary injunction be granted restraining such alienation or encumbering during the pendancy of this suit.

(*d.*) That said defendants may full, true, and perfect answer make to this bill of complaint (without oath, answer under oath being hereby expressly waived), and that such other and further relief may be granted to your orators in the premises as shall be agreeable to equity and good conscience.

(*e.*) That the writ of subpœna may be issued to said defendants according to the rules and practice of this court.

And your orators will ever pray, etc.,

CALIXTE D. BERNIER,
GEORGE E. BERNIER,
LOUIS G. BERNIER,
SAMUEL G. BERNIER,
WILLIAM BERNIER,
Complainants.

BRENNAN & DONNELLY,
Solicitors for Complainants.
LAWRENCE F. BEDFORD, *Of Counsel.*

STATE OF MICHIGAN, } ss:
County of Chippewa, }

Be it remembered that on this 2nd day of February, 1888, before me, a notary public in and for said county, came George E. Bernier, who, being by me duly sworn, doth depose and say that he is one of the above-named complainants; that he has heard read and signed the foregoing bill of complaint and knows the contents thereof, and the same is true as he verily believes.

J. W. McMAHON,
Notary Public, Chippewa County, Michigan.

(Endorsed:) Filed March 15, 1888. G. L. French, dep. register.

16 STATE OF MICHIGAN:

The Circuit Court for the County of Chippewa. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH BERNIER, MARY BERNIER-ENDRESS, Matilda Bernier-Endress, Edward Bernier, and John H. Goff, Defendants.

The answer of John H. Goff, one of the defendants, to the bill of complaint filed in the above entitled cause.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is or are material or necessary for him to make answer unto, answering, admits, denies, alleges, and answers as follows:

(1.) As to the filing of a pre-emption claim and notice, as set forth in the first clause of paragraph 1 of complainants' bill, this defendant is a stranger.

17 (2.) This defendant admits that there is of record a deed from Victoria La Londe to Edward Bernier, as stated in said bill, but as to what right or title said La Londe had to convey thereby and as to whether any or as to what consideration was paid to said La Londe by said Bernier this defendant denies any knowle-ge, information, or belief and leaves complainants to their proofs.

(3.) This defendant denies any knowledge, information, or belief as to the matter stated in paragraph No. 3 of said bill.

(4.) This defendant admits that Edward Bernier died on or about the 17th day of June, 1876, intestate, leaving no widow, and that his wife died on or about April 2nd, 1872, and that he left surviving him the heirs and minor heirs named in paragraph 4 of said bill, but the remaining allegations in the said 4th paragraph of said bill and every part thereof are denied by this defendant.

(5.) This defendant admits the allegations contained in the first clause of paragraph No. 5 of said bill to the extent that there is an act of Congress authorizing the charge from a pre-emption to a homestead filing, but this defendant believ*ing* that said Edward Bernier did not act in pursuance of said act of Congress, and is informed and believes that the said Edward Bernier, on or about the 24th day of May, 1875, made homestead entry of the east half of the northeast quarter of section (8) eight and the southwest quarter of the northwest quarter and lot number (2) two of section (9) nine,

18 in township forty-seven north, of range one east, in the county of Chippewa and State of Michigan.

(6.) This defendant admits that a patent was issued on or about the 25th day of April, 1877, by the United States to the "minor

heirs of Edward Bernier, deceased," granting the lands covered by the homestead entry mentioned in paragraph No. 5 of this answer, and avers that said patent was on or about the 5th day of June, A. D. 1877, duly recorded in the office of the register of deeds for Chippewa county, in Liber 6 of Deeds, in page 212, as will more fully and at large appear by reference to said record, to which this defendant for greater certainty prays leave to refer when the same shall be produced and proved as this honorable court shall direct, and this defendant denies that there was any mistake in the issuing thereof to said minor heirs of Edward Bernier, deceased; denies that said patent should have been issued to "the heirs" of said Edward Bernier, deceased, and denies that the giving of said patent to the minor heirs was without the knowledge, consent, or procurement of said complainants, and denies that it was in violation of any of their legal or equitable rights in said lands last above described, and denies that said complainants had any legal or equitable rights therein; and this defendant, answering, says that he is informed and believes that the proofs taken upon the commutation of said homestead entry were taken with especial reference to disclosing to the local land officers at Marquette, Michigan, the fact that there were minor heirs of Edward Bernier, deceased, at the date of said proofs, and the question as to what
19 persons or parties the certificate and patent should be issued was submitted to said officers, who decided that the said "minor heirs" were entitled to the fee in said lands last above mentioned, and issued a certificate and receipt accordingly; all of which was with the knowledge of complainants, said attorney having conducted the taking of testimony and proofs, and that said decision has never been appealed from, reversed, set aside, or in any manner rendered void, but remains in full force and virtue to this day; to which decision now on file and of record in the General Land Office, at Washington, D. C., or to a certified copy thereof, reference is hereby made.

(7.) This defendant denies that he holds title to the lands referred to and covered by said patent subject to any right of complainants.

(8.) This defendant admits that the attorney referred to in paragraph 8 of said bill, who is George W. Brown, of Sault Ste. Marie, Michigan, as this defendant is informed and believes, acted in doing the business of commuting said homestead and in procuring the issuing of said patent; but this defendant denies that said attorney supposed that said patent ran to "the heirs" of Edward Bernier, deceased. This defendant expressly denies that the discovery of the fact that said patent runs to the "minor heirs" is of recent date, avers a personal knowledge of the fact for several years, and this defendant expressly denies that any one of complainants has resided continuously or otherwise on the lands in dispute under an agreement with the heirs generally or with the defendants; admits that he holds out and claims that he owns an undivided fifth of
20 the land hereinafter described, and admits that under and by the strict terms of said patent the title in fee in the lands therein described was vested in said "minor heirs," as alleged in

said bill, but this defendant denies that said minor heirs or this defendant hold title subject to any rights of complainants.

(9.) And this defendant admits that said Alfred Bernier on or about December 3d, 1885, and February 20th, 1886, made a transfer by quitclaim deed to this defendant of all his interest in lands which are described in deeds which are recorded, as is set forth in paragraph 9 of complainants' bill, but denies that the transfer was colorable and denies that he had full knowledge or any knowledge of the right of complainant- in said premises, and avers that the said transfer was made and accepted in good faith for a fair and valuable consideration, to wit, three hundred and fifty dollars, then paid to said Alfred Bernier, and that the price paid was full and ample at that time.

(10.) And this defendant, further answering, denies that the complainants are entitled to the relief or any part thereof in the said bill demanded, and prays the same advantage of this answer as of a demurrer.

(11.) And this defendant claims from the complainants in this cause the relief which might be had by a cross-bill, and presents the facts upon which his equity rests and claims the benefit of a cross-bill, according to the rules and practice of said court, and alleges in his own behalf that upon the death of the said Edward Bernier intestate, leaving no widow him surviving and leaving the following infant children under the age of twenty-one years, viz.,

Alfred Bernier, Joseph T. Bernier, Mary Bernier (now Mary
21 Endress), and Matilda Bernier (now Matilda Endress), and
Edward Bernier, the right and fee to said lands so included in the homestead entry aforesaid inured to the benefit of the said infant children, of whom there were five, whose names are above mentioned, and that Alfred Bernier, one of said infants named, was born on the 28th day of May, A. D. 1860; that in about one year after this defendant purchased the right and title of said Alfred Bernier in and to said lands mentioned in said deeds the value of said lands, together with all real estate in the vicinity of Sault Ste. Marie, greatly increased, and this defendant avers that said complainants and one Hoel D. Rains have by making the deeds set forth in paragraph 11 of complainants' bill made a cloud upon the title of this defendant to said lands so purchased by him of said Alfred Bernier; that said deed to said Rains was without consideration and for the pretended consideration of ten thousand dollars, and said deeds, as this defendant verily believes, were for the purpose of casting a cloud upon the title of all of the defendants herein and prevented a sale of said lands.

Wherefor- this defendant prays relief as follows:

(*a.*) That this court will determine and decree that this defendant is the owner in fee of an undivided one-fifth of the said east half of the northeast quarter of section eight (8) and the west ten acres of the west side of the southwest quarter of the northwest quarter of section nine (9), all in town. forty-seven (47) north, of range one east, containing about seventy acres.

(*b.*) That complainants have no right, title, or interest
22 therein, and that the court direct and decree said complainants to convey to this defendant complainants' pretended title in and to said undivided one-fifth, and on refusal so to do that the decree itself or a certified copy thereof, upon recording the same in the register of deeds' office for Chippewa county, shall stand in lieu of such conveyance.

(*c.*) That said complainants be perpetually enjoined on the hearing of said cause from conveying, incumbering, or in any manner interfering with said lands.

And that this defendant may have such other and further relief in the premises as equity and good conscience may require and as to this court may seem right.

JOHN H. GOFF,
By GEORGE A. CADY,
His Solicitor.

GEORGE A. CADY, *Solicitor.*

23 STATE OF MICHIGAN:

The Circuit Court for the County of Chippewa. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH BERNIER, MARY BERNIER-ENDRESS, Matilda Bernier-Endress, Edward Bernier, and John H. Goff, Defendants.

The joint and several answer and cross-bill of Matilda Bernier-Endress and Edward Bernier, two of the above-named defendants, to the bill of complaint of Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier, complainants.

These defendants, now and at all times saving and reserving to themselves all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereto or unto so much or such parts thereof as these defendants are advised is material for
24 them to make answer unto and for their cross-bill in this suit, the benefit of which they claim by such answer under chancery rule No. 123, answering, allege, admit, and deny as follows:

(1.) As to the filing of a pre-emption claim and notice, as set forth in the first clause of paragraph one of the bill, these defendants deny any knowledge or information thereof sufficient to form a belief, and therefore leave complainants to their proof.

(2.) These defendants admit that there is a deed on record from Victoria La Londe to Edward Bernier, as stated in the bill, and covering the land stated in the bill to be covered thereby, but as to

what right or title said La Londe had to convey thereby and as to whether any or as to what consideration was paid to her by Edward Bernier these defendants deny any knowledge, information, or belief, and therefore leave complainants to their proof.

(3.) Defendants deny any knowledge, information, or belief as to the matter stated in paragraph No 3 of the bill.

(4.) These defendants admit that Edward Bernier died about the 17th day of June, 1876, intestate, leaving no widow, and that his wife had died about April 2d, 1872, and that he left surviving him the heirs named in the bill and of the two classes therein named; but the remaining allegations in the fourth paragraph of the bill and every part thereof are denied by these defendants.

(5.) These defendants admit the allegations contained in the first clause of paragraph No. 5 of the bill if it is meant in said clause to state that there is a provision of law for changing from a pre-
emption to a homestead filing; but these defendants deny
25 any knowledge, information, or belief as to whether Edward Bernier was in a position to avail himself of such provision of the public land laws. These defendants also deny any positive knowledge as to whether Edward Bernier changed his filing, as stated in paragraph No. 5, but they are informed and believe that all the land described in said bill of complaint in paragraph No. 1, excepting the three acres out of the S. W. corner of the N. W. quarter of the N. W. quarter of section 9, was entered on the 24th day of May, 1875, by said Edward Bernier as a homestead, known as entry No. 915, as more fully and at large will appear from the records of the General Land Office, at Washington, D. C., to which reference is hereby made for greater certainty; and these defendants expressly deny that complainants proved up and commuted said homestead entry and complied with the requirements of the law with reference thereto. Defendants also expressly deny that complainants were entitled to have a patent issued to them, as provided by any act of Congress; deny that any patent should be issued conferring or vesting the title in fee to the said lands upon or in the heirs generally of Edward Bernier, deceased, and deny that whatever money it was necessary to pay for fees, charges, and expenses in procuring a patent *were* paid by complainants.

(6.) These defendants admit the issuing of a patent as stated in the bill, except that they deny that it covers the three-acre parcel described in the first paragraph of the bill; but they deny that in the issuing thereof to the "minor heirs" of Edward Bernier
there was any manner of mistake, and deny that the same
26 should or could by any existing provision of law have issued to the heirs generally or to the complainants, and deny that complainants have had or now have any legal or equitable interest or right in the lands covered by said patent. These defendants allege that said patent was, on or about the 5th day of June, A. D. 1877, duly recorded in the office of the register of deeds for Chippewa county, in Liber 6 of Deeds, on page 212, as will more fully and at large appear by reference to said record, to which these defendants for greater certainty pray leave to refer, etc. Defendants

deny that the giving of said patent to the "minor heirs" was without the knowledge, consent, or procurement of complainants and in violation of their rights, but to the contrary thereof defendants answer that the proofs made upon the proving up or making final commutation homestead proof for said homestead were taken with especial reference to disclosing to the officers of the local land office at Marquette, Michigan, to wit, the register and receiver, the fact that there were two classes of heirs and as to what heirs of said Edward Bernier were minors at the date of his death, and that the question as to what parties the title should be properly vested in by the Government was submitted to said land officers, who passed upon the same and decided that the "minor heirs," under the proofs, were entitled to the fee in said lands, and issued a certificate and receipt accordingly, upon which certificate and receipt said patent was afterwards issued, all of which was then well known to complainants, their attorney having conducted the taking of testimony and all else necessary in the making of final proof, as in said bill
27 of complaint stated; that this decision of said officers of the said local land office has never been appealed from, reversed, set aside, or in any manner rendered void, but remains to this day in full force and effect; to which decision, now of record and on file in the General Land Office, at Washington, D. C., or to a certified copy thereof reference is hereby made for greater certainty.

(7.) These defendants deny that they hold title to the lands in the bill referred to and covered by the patent in question subject to complainants' rights; but they admit that under and by the strict terms of said patent the title in fee in the lands therein described was vested in said "minor heirs," as alleged in said bill.

(8.) These defendants admit that the attorney referred to in paragraph 8 of the bill, who is Geo. W. Brown, of Sault Ste. Marie, Michigan, as these defendants are informed and believe, acted for the heirs of Edward Bernier in commuting said homestead and in procuring the issue of said patent, but they deny that he supposed or could suppose that the patent ran to the heirs generally of said Edward Bernier. These defendants expressly deny that the discovery of the fact that said patent runs to the "minor heirs" is of recent date, and on the contrary thereof answer that the fact has been well known to all the heirs from the time of the issuing thereof; and these defendants expressly deny that any one of the complainants has resided continuously or otherwise on the lands in dispute under an agreement with the heirs generally or with the defendants.

28 (9.) As to the allegation in the 11th paragraph of the bill that the lands conveyed to Hoel D. Rains constituted all the portion of lands called in said bill pre-empted lands, the title to which remained in the heirs of said Edward Bernier, these defendants expressly deny the same to be true and answer that at the time of said conveyance to Rains there were other of the lands covered by said patent, the title to which remained in the heirs, who were minors at the time of the death of said Edward Bernier. These defendants admit that they hold out and claim that they are the only and sole

owners each of an undivided one-fifth part of the land covered by the patent in question, and that they deny any right of complainants therein. Defendants, however, deny that this just and righteous claim on their behalf is a fraud upon the rights of complainants in the premises or works them any wrong or injury. But these defendants answer, on the contrary, that the false and fraudulent claims and pretenses of the complainants which for some time past they have been making work to the manifest injury of these defendants, as hereinafter more fully set forth.

(10.) And these defendants, further answering, deny that the complainants are entitled to the relief or any part thereof in the said complaint demanded, and pray the same advantage of this answer as of a demurrer, and the same advantage under the facts and circumstances herein already and hereinafter set forth as they might or could have under a formal cross-bill according to the former course and practice in courts of chancery.

29 (11.) These defendants further allege in behalf of the title set forth in said patent to the "minor heirs" of the said Edward Bernier that the complainants do falsely and fraudulently pretend that these defendants each hold only a one-tenth interest in and to the land in question, complainants each claiming to own a tenth part thereof; that under such false and pretended claim of title complainants have been guilty of many wrongful actings and doings, such as trespassing on said premises, taking profits and produce therefrom, placing one or more tenants thereon, aiding and encouraging litigation against the true holders of the said title, including these defendants, as set forth in the 11th paragraph of said bill of complaint, and clouding the title of these defendants by the conveyances also in said 11th paragraph named; that said conveyance of March 30, 1887, was made just after the great rise in the value of real estate at Sault Ste. Marie and vicinity (including the lands covered by said patent) and for a pretended consideration of $10,000.00, no part of which was paid, and for the purpose of clouding the defendants' title and embarrassing a sale of said land.

That said conveyance to said Rains was upon secret trusts not appearing upon the face thereof.

12. Wherefore these defendants pray relief as follows:

(*a.*) That this court will determine and decree these defendants to be the rightful owners each of an undivided one-fifth of the lands in dispute, not exceeding the amount and descriptions covered by said patent.

30 (*b.*) That complainants have no right, interest, or title therein, and that the court will direct said complainants to convey to each of these defendants the complainants' pretended title in and to said undivided fifth, or on refusal so to do that it may be ordered that, in that case, the decree itself, upon the recording of a certified copy thereof in the office of the register of deeds of Chippewa county, Michigan, shall stand in lieu of such conveyance.

(*c.*) That said complainants be perpetually enjoined from conveying, incumbering, or in any manner interfering with said lands, to the extent of the interest of these defendants therein, and that

these defendants may have such other and further relief as equity may require and as to this court may seem right.

MATILDA BERNIER-ENDRESS,
EDWARD BERNIER,
By GEO. A. CADY, *Their Solicitor.*

GEORGE A. CADY,
Solicitor for Defendants Matilda Bernier-Endress, Edward Bernier, and John H. Goff.

31 The Circuit Court for the County of Chippewa.

CALIXTE BERNIER *et al.*
vs.
ALFRED BERNIER *et al.* } In Chancery.

The replication of Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier, complainants, to the answer of Matilda Bernier Endress & Edward Bernier, defendants.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter of thing whatever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to
32 aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

BRENNAN & DONNELLY,
Solicitors for Compl'ts.

33 The Circuit Court for the County of Chippewa. In Chancery.

CAL-XTE D. BERNIER *et al.*
vs.
ALBERT BERNIER *et al.*

The replication of Calixte D. Bernier, George E. Bernier, Louis E. Bernier, Samuel F. Bernier, and William Bernier, complainants, to the answer of John H. Goff, one of the defendants.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the

said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter of thing whatever in the said answer contain-d material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to
34 aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

BRENNAN & DONNELLY,
Solicitors for Compl'ts.

35 The Circuit Court for the County of Chippewa.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. Bern-er, Samuel F. Bernier, and William Bernier, Complainants,
vs.
ALFRED BERNIER, JOSEPH F. BERNIER, MARY BERnier Endress, Matilda Bernier Endress, Edward Bernier, and John H. Goff, Defendants.
} In Chancery.

George E. Bernier, being duly sworn, deposes and says that he is one of the above-named complainants; that he knows the defendant Joseph T. Bernier, and that said defendant Joseph T. Bernier resides out of the State of Michigan and in the city of Cleveland, in the State of Ohio.

GEO. E. BERNIER.

Subscribed and sworn to before me this 2nd day of August, A. D. 1887.

WM. A. CLARK, JR.,
Notary Public, Chippewa Co., Mich.

The Circuit Court for the County of Chippewa. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH T. BERNIER, MARY BERNIER ENDRESS, Matilda Bernier Endress, Edward Bernier, and John H. Goff, Defendants.

36 Suit pending in the circuit court for the county of Chippewa, in chancery, at Sault Ste. Marie, on the 27th day of September, A. D. 1887.

It satisfactorily appearing to the undersigned by affidavit on file that the defendant Joseph T. Bernier is not a resident of this State,

but resides at Cleveland, in the State of Ohio, on motion of Brennan & Donnelly, complainants' solicitors, it is ordered that the said defendant Joseph T. Bernier cause his appearance to be entered herein within four months from the date of this order, and in case of his appearance that he cause his answer to the complainants' bill of complaint to be filed and a copy thereof to be served on said complainants' solicitors within twenty days after service on him of a copy of said bill and notice of this order, and that in default thereof said bill be taken as confessed by the said non-resident defendant.

And it is further ordered that within twenty days after the date hereof the said complainants cause a notice of this order to be published in the Sault Ste. Marie Democrat, a newspaper printed and circulating in said county, and that such publication be continued therein at least once each week for six successive weeks, or that they cause a copy of this order to be personally served on said non-resident defendant at least twenty days before the time above prescribed for his appearance.

(Signed) CHAS. McCALL,
Circuit Court Commissioner.

BRENNAN & DONNELLY,
Complainants' Solicitors.
L. F. BEDFORD, *Of Counsel.*

37 The Circuit Court for the County of Chippewa. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH T. BERNIER, MARY BERNIER ENDRESS, Matilda Bernier Endress, Edward Bernier, and John H. Goff, Defendants.

Suit pending in the circuit court for the county of Chippewa, in chancery, at Sault Ste. Marie, on the 24th day of September, 1887.

It satisfactorily appearing to the undersigned, by affidavit on file, that the defendant Joseph T. Bernier is not a resident of this State, but resides at Cleveland, in the State of Ohio, on motion of Brennan & Donnelly, complainants' solicitors, it is ordered that the said defendant Joseph T. Bernier cause his appearance to be entered herein within four months from the date of this order, and, in case of his appearance, that he cause his answer to the complainants' bill of complaint to be filed and a copy thereof to be served on said complainants' solicitors within tw-nty days after service on him of a copy of said bill and notice of this order, and that in default thereof said bill be taken as confessed by the said non-resident defendant.

And it is further ordered that within twenty days after the date hereof the said complainant- cause a notice of this order to be published in the "Sault Ste. Marie Democrat," a newspaper printed and circulating in said county, and that such publication be continued

there at least once each week for six successive weeks, or that they cause a copy of this order to be personally served on said non-resident defendant at least twenty days before the time prescribed for his appearance.

Dated Sept. 24th, 1887.

(Signed) CHAS. McCALL, [L. S.]
Circuit Court Commissioner for Chippewa Co.

BRENNAN & DONNELLY,
Complainants' Solicitors.
LAWRENCE T. BEDFORD, *Of Counsel.*

38 STATE OF MICHIGAN:

The Circuit Court for the County of Chippewa. In Chancery.

CALIXTE D. BERNIER, GEORGE BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOS. BERNIER, MARY BERNIER ENDRESS, Matilda Bernier Endress, Edward Bernier, and John H. Goff, Defendants.

The answer and disclaimer of Joseph Bernier, one of the defendants, to the bill *fo* complaint of the above-named complainants.

This defendant, saving and reserving to himself now and at all times hereafter all manner of advantage and benefit of exceptions and otherwise that can or may be had and taken to the many untruths, uncertainties, and imperfections in the said complainants' bill of complaint contained, *fro* answer thereunto or unto so much or such parts thereof as is material for this defendant to make answer unto answers and says that he fully and absolutely disclaims any manner of right, title, and interest whatsoever in and to the real estate in said bill of complaint mentioned as of the estate of Edward Bernier, deceased, in the said bill named and in and to every part thereof.

This defendant answers that he was the owner in fee of one undivided fifth part of the pr-mises described in the bill of complaint as the east ½ of the northeast ¼ of sec. 8, T. 47 N., R. 1 east, previous to the first day of February, 1886, on which day he, by quitclaim deed, conveyed the same to defendant Mary Bernier Endress, which conveyance appears of record in the office of the register of deeds of Chippewa Co., Mich., in Liber 16 of Deeds, at p. 162, to which reference is made for greater certainty, and that he was the owner in fee of one undivided fifth part of the premises described in the bill of complaint as the S. W. ¼ of the N. W. ¼ and lot No. 2 of sec. nine (9), in T. 47 N., or R. one (1) east, previous to the 9th day of
39 April, 1886, on which day he, by quitclaim deed, conveyed the E. 30 acres of the said S. W. ¼ of N. W. ¼ and said lot 2 to one George Kemp, of the village of Sault Ste. Marie, Mich., which deed appears of record in the office of the register of deeds of said

Co., in Liber 17 of Deeds, at page 160, to which record or a certified copy thereof reference is hereby made for greater certainty, and con-inued of record to own the remaining west ten acres of the S. W. ¼ of N. E. ¼ until the 19th day of May, A. D. 1887, on which day he, by quitclaim deed, conveyed the same to said Mary Bernier Endress, which deed appears of record in the office of the register of deeds of said Co., in Liber 17 of Deed-, at p. 402, to which record or a certified copy thereof reference is hereby made for greater certainty.

This defendant, further answering, says that he never owned and does not claim to own any interest in the property described in the bill of complaint as three acres out of the S. W. corner of the N. W. ¼ -f the N. W. ¼ sec. 9, T. 47 N., of — one (1) E.

And this defendant denies all and all *am*nner of unlawful combination and confederacy unjustly charged against him in an*y* by the said bill of complaint; without this, that any other matter or thing in said bill contained material or necessary for this defendant to make answer unto, confessed or avoided, traversed or denied, is true; all which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH BERNIER,
By GEORGE A. CADY,
His Solicitor.

GEORGE A. CADY,
Sol'r for Def't.

(Endorsed:) Filed Dec. 12, 1887. Geo. W. Brown, register.

40 The Circuit Court for the County of Chippewa. In Chancery.

CALIXTE D. BERNIER, GEORGE BERNIER, LOUIS BERNIER, SAMUEL BERNIER, WILLIAM BERNIER
vs.
ALFRED BERNIER, JOSEPH BERNIER, EDWARD BERNIER, MATILDA BERNIER ENDRESS, MARY BERNIER ENDRESS, and JOHN H. GOFF.

Lawrence F. Bedford, being duly sworn, says that he is of counsel for the complainants above named and has knowledge of the facts herein stated; that the said bill of complaint was filed with the register of this court on the 1st day of July, 1887, for the purpose therein stated; that the said bill has been taken as confessed by the defendants Alfred Bernier and Mary Bernier Endress, and that all the proceedings to take said bill as confessed have been regular and according to the rules and practice of this court.

LAWRENCE F. BEDFORD.

Subscribed and sworn to before me this 15th day of December, 1887.

CLEMENT C. YERKES,
Notary Public, Chippewa Co., Mich.

41 In the Circuit Court for the County of Chippewa. In Chancery.

CALIXTE BERNIER, GEORGE BERNIER, LOUIS BERNIER, SAMUEL BERNIER, WILLIAM BERNIER
vs.
ALFRED BERNIER, JOSEPH BERNIER, EDWARD BERNIER, MATILDA BERNIER ENDRESS, MARY BERNIER ENDRESS, JOHN H. GOFF.

STATE OF MICHIGAN, *County of Chippewa,* } *ss:*

Lawrence F. Bedford, being duly sworn, says that he is of counsel for the complainants and has knowledge of the facts herein stated; that he has searched the files and records of this court in the register's office and does not find that an appearance in this cause has been entered by or for the defendant- Alfred Bernier and Mary Bernier Endress; that he has received no notice of such appearance and has no reason to believe and does not believe that such appearance has been entered.

LAWRENCE F. BEDFORD.

Sworn and subscribed before me this 15th day of December, A. D. 1887.

CLEMENT C. YERKES,
Notary Public, Chippewa Co.

42 *General Order pro Confesso and Refused.*

STATE OF MICHIGAN:

In the Circuit Court for the County of Chippewa. In Chancery.

CALIXTE BERNIER, GEORGE BERNIER, LOUIS BERNIER, SAMUEL BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH BERNIER, EDWARD BERNIER, MATILDA Bernier Endress, Mary Bernier Endress, and John H. Goff, Defendants.

On filing due proof of personal service of the subpœna issued in this cause on the defendant- Alfred Bernier and Mary Bernier Endress therein on or before the return day thereof, and more than twenty days having since elapsed and said defendant- not having appeared, and on reading and filing the affidavit of Lawrence F. Bedford, of counsel for said complainants, showing that all the proceedings to take the bill of complaint as confessed against said defendants have been regular, according to the rules and practice of this court—

On motion of Brennan & Donnelly, solicitors for the complainants,

it is ordered that the bill of complaint filed in this cause be, and the same hereby is, taken as confessed by the said defendants.

BRENNAN & DONNELLY,
Solicitor- for Compl'ts.
LAWRENCE F. BEDFORD, *Of Counsel.*

43 The Circuit Court for the County of Chippewa. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER
vs.
ALFRED BERNIER, JOSEPH T. BERNIER, EDWARD D. BERNIER, MATILDA B. ENDRESS, MARY B. ENDRESS, and JOHN H. GOFF.

It is hereby stipulated in this cause that the examination of all witnesses in this case be had in open court as in a suit at law.

BRENNAN & DONNELLY,
Sol'rs for Compl'ts.
GEORGE A. CADY,
Sol'r for Def'ts Jos. Bernier, Ed. Bernier, Matilda B. Endress, and John H. Goff.

44 The Circuit Court for the County of Chippewa. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Compl'ts,
vs.
ALFRED BERNIER, JOSEPH BERNIER, MARY ENDRESS BERNIER, Matilda Bernier Endress, Edward Bernier, & John H. Goff, Def'ts.

The replication of Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier, complainants, to the answer and disclaimer of Joseph Bernier, one of the defendants above named.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer & disclaimer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer and disclaimer is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter of thing whatever in the said answer and disclaimer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confesse- and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and
45 prove as this honor-ble court shall direct, and humbly pray as in and by their said bill they have already prayed.

BRENNAN & DONNELLY,
Solicitors for Compl'ts.
L. F. BEDFORD, *Of Counsel.*

46 STATE OF MICHIGAN:

In the Circuit Court for the County of Chippewa. In Chancery.

BERNIER *et al.*
vs.
BERNIER *et al.*

In this cause it is hereby stipulated and agreed by and between the counsel of the respective parties that John A. France shall act as the official stenographer and take the testimony in said cause in short-hand and shall transcribe the same into long-hand and file the same in the office of the clerk of this court.

It is further agreed that the fees of the said stenographer shall in the first instance be borne equally between the parties hereto and shall be taxed in the cause the same as other costs, the whole amount to be taxed by prevailing party.

Mar. 20, 1888.

BRENNAN & DONNELLY,
Compl'ts' Sol'rs.
L. F. BEDFORD, *Of Counsel.*
GEO. A. CADY,
Sol'r for Certain Defendants Herein.

47 The Circuit Court for the County of Chippewa. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER
vs.
ALFRED BERNIER, JOSEPH BERNIER, MARY B. ENDRESS, EDWARD BERNIER, and JOHN H. GOFF, MATILDA B. ENDRESS.

Opinion of Circuit Judge.

Complainants are five of the ten children of Edward Bernier, deceased. The purpose of this suit is to establish their title, as heirs-at-law of said Edward Bernier, to an undivided one-half of the east half of the northeast quarter of section eight and the southwest quarter of the northwest quarter and lot number two (2) of section nine (9), town. forty-seven (47) north, range one (1) east, containing 155.60 acres.

On May 24, 1875, said Edward Bernier made homestead entry of the lands in controversy under an act of Congress approved May 20th, 1862, entitled "An act to secure homesteads to actual settlers on the public domain," and from that time continued to occupy and improve the same until he died, June 17th, 1876.

At the time of his death said Edward Bernier was a widower, his wife having died April 5th, 1872. He left ten children him surviving, the five complainants, who were then over 21 years of age, and five less than 21 years of age, as follows: Mary Bernier (now Mary Endress), Alfred Bernier, Ma-ilda Bernier (now Matilda Endress), Edward Bernier, Jr., and Joseph F. Bernier.

On October 23rd, 1876, Samuel F. Bernier, one of the complainants, pursuant to an arrangement amongst the heirs, claiming and purporting to act on behalf of all, commited the homestead entry under the provisions of sec. 232 of chap. 8 of existing land laws as codified by Congress, made the requisite proof of settlement and improvement, paid the minimum price of $1.25 per acre therefor, and received in his own name a certificate of cash payment from the U. S. Land Office, entitling him to a patent therefor.

A portion of the money was furnished by complainants themselves and a portion was advanced by parties who were
48 negotiating to purchase from the estate part of the homestead.

On January 17th, 1877, the U. S. Land Department, at Washington, assumed to suspend the entry of said Samuel F. Bernier a-d *caused* his certificate, calling upon the local land office at Marquette for proof as to who were the minor heirs of said Edward Bernier, deceased; this proof was furnished, and thereupon there was issued to said minor heirs a certificate of cash payment by them and for their benefit only.

No other *ir* further proofs were taken, and this second certificate was necessarily based upon the cash payment and proof of occupation and improvement made by Samuel F. Bernier.

His certificate does not appear to have — called for and was never surrendered.

On April 25th, 1877, a patent of these lands in controversy was issued to the "minor heirs of Edward Bernier, deceased." The said homestead was at that time not worth to exceed $4 per acre, and its market value increased but little until within the past two years. The estate of said Edward Bernier has remained unsettled and undivided, for the most part being managed by George Bernier, one of the older heirs. He has had possession of the land in controversy; has managed and paid the taxes on it as a part of the estate. The heirs are now all of age.

After he became of age and before the commencement of this suit, Alfred Bernier conveyed by quitclaim deed to John H. Goff, one of the defendants, all his interest in his father'- estate, including said homestead.

After becoming of age Joseph Bernier conveyed his interest to his sister, Mary Bernier Endress. He has filed a disclaimer herein and the bill has been taken as confessed as to her.

The contesting defendants, therefore, are Matilda Bernier Endress, Edward Bernier, Jr., and John H. Goff. All parties claim title to the land in controversy through the homestead entry of Edward Bernier, deceased, and the commutation proof and cash payment therefor made by Samuel F. Bernier.

On these facts the complainants allege that the patent was inadvertently and erroneously issued to the minor heirs; that it legally ought to have issued to all the heirs, and that this court can and should correct the mistake by decreeing the title vested in the patentees in trust for the equal use and benefit of all heirs of said Edward Bernier, deceased.

That such a question is a proper one for adjudication by a court of equity appears to have been affirmatively settled by a long line of decisions.

49 The matter as presented before the Land Department was not litigated or in any way contested and involved no disputed questions of fact upon which the rulings and findings of that department would be final. If complainants are entitled to relief at all it arises from a misapprehension of the Land Commissioner in applying the existing laws to uncontroverted facts. The title has passed from the Government and the question has become one of private rights whether or not, according to the intent of the act of Congress concerning public land, the parties holding the patent title should hold absolutely as their own or should hold as trustees for all the Berneir heirs.

This is a proper question for a court of equity. (Quinby *vs.* Conlen, 104 U. S., 410; Johnson *vs.* Gowsley, 13 Wall., 290, and cases cited.)

Complainants' counsel rely upon the provisions of the homestead act found in sec. 2291, Rev. St. U. S., which are as follows: "No certificate, however, shall be given or patent issued therefor until the expiration of five years from the date of entry; and if at the expiration of such time, or at any time within two years thereafter, or if he be dead his widow, or in case of her death his heirs or devisees, * * * proves by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately preceeding the time of filing such affidavit, * * * then in — case he, she, or they, if at that time citizens of the United States, shall be entitled to a patent as in other cases provided by law."

The title to the homestead was perfected under sec. 2301 of the same act, which provides that nothing therein shall prevent any person who has availed himself of the benefits of sec. 2289 (a homestead entry) "from paying the minimum price for the quantity of land so entered at any time before the expiration of the five years and obtaining a patent therefor from the Government, as in other cases directed by law, on making proof of settlement and cultivation provided by law granting pre-emption rights."

This seems to indicate that the commutation can be perfected only by such persons as are entitled to pre-empt. In pre-emption, where the entryman dies before consummating his claim, the title, if subsequently perfected, inures *to* the benefit *to the benefit* of all the heirs. But it cannot be maintained in this case that any act of the adult heirs tending to change the nature of the entry from a homestead to a pre-emption could defeat or effect the interest of the minor heirs. Their rights became fully vested at the time of the

50 death of the father. The entry was then an homestead. If at the expiration of the five years, on the perfection of the homestead entry, as provided by law, only the minor heirs took title, they would in the meantime be the only ones entitled to commute. The case stands legally the same as though we were enquiring into

the rights of the parties where a patent issued on final homestead proofs.

It is insisted by counsel for the defense that where father and mother are both dead the fee in the land inures exclusively to the minor children under sec. 2292 Rev. St. U. S., which provides that "In case of the death of both father and mother, leaving an infant child or children under 21 years of age, the right and fee sh-ll inure to the benefit of such infant child or children, and the executor, administrator, or guardian *amy*, at any time within two years after the death of the surviving parent and in accordance with the laws of the State in which such children for the time being here their domicile, sell the land for the ben-fit of such infants, but for no other purpose, and the purchaser shall acquire the absolute title by purchase and be entitled to a patent from the United States on payment of the office fees and the sum of money above specified."

The effect of such a construction would necessarily be to render nugatory a portion of the provisions of sec. 2291, which provides that in case of the death of both father and mother the heirs or devisees, upon making proper proof, shall be entitled to the patent. It is just and reasonable to presume that sec. 2292 was not intended to nullify a portio- of the same act and to change the common law of descent, but rather to apply to a distinct and special class of cases where only minor heirs were left, and that where both min-r and adul- heirs sur-ived the parents, as in this case, they inherited equally under sec. 2291. It is the policy -f the courts to give effect to all parts of a statute and to construe them harmoniously where possible. This view reconsiles all parts of the statute, is equitable and natura- and follows the holding of the supreme court of Missouri in Crumb *vs.* Hambleton, 86 Mo., 501.

This court must, t-erefore, hold that the equitable title to the lands in controversy vested in all the heirs of said Edward Bernier, deceased, and that the defendants hold the legal title, by virtue of the patent, in trust for all. The defendants should convey to said complainants an undivided one-half interest or to each an one-tenth in said lands, or in default thereof the decree herein, when recorded, to stand in lieu of said conveyance.

Dated April 10th, A. D. 1888.

J. H. STEERE,
Circuit Judge.

(Endorsed:) Filed April 11, 1888. Geo. W. Brown, register.

51 At a general term of the circuit court for the county of Chippewa held at the court-house, in the village of Sault Ste. Marie, in said county, on the 19th day of March, A. D. 1888.

Present: The Hon. Joseph H. Steere, circuit judge.

CALIXTE S. BERNIER, GEORGE E. BERNIER, LOUIS E. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH BERNIER, MARY BERNIER ENDRESS, MATILDA BERNIER ENDRESS, JOHN H. GOFF, Defendants.

In this cause, the parties being in court, by their respective attorneys, ready for trial, and the same having been duly brought on to trial before the court without a jury, and the court having heard the proofs and allegations of the parties in part, adjourned to March 20th, A. D. 1888, at 9 o'clock a. m.

J. H. STEERE,
Circuit Judge.

52 TUESDAY, MARCH 20TH, A. D. 1888—nine o'clock a. m.
Present: The Hon. Joseph H. Steere, circuit judge.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. Bernier, Samuel F. Bernier, William Bernier, Complainants,
vs.
ALFRED BERNIER, JOSEPH BERNIER, MARY ENDRESS, Matilda Bernier Endress, Edward Bernier, and John H. Goff, Defendants.
} Chancery.

This cause having heretofore come on to be heard by the court without a jury, after hearing the proofs and allegations of the parties in full and the arguments of counsel, said cause was submitted, taken under advisement, and held by the court for further consideration.

J. H. STEERE,
Circuit Judge.

53 The Circuit Court for the County of Chippewa. In Chancery.

At a session of said court continued and held at the court-room thereof, in the village of Sault Ste. Marie, in said county, on the 19th day of March, A. D. 1888.
Present: The Hon. Joseph H. Steere, circuit judge.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. Bernier, Samuel F. Bernier, and William Bernier, Complainants,
vs.
ALFRED BERNIER, JOSEPH T. BERNIER, MARY B. ENDRESS, Matilda B. Endress, Edward Bernier, and John H. Goff, Defendants.
} Decree.

This cause being at issue upon bill, answer, and replication as to the defendants Edward Bernier, Matilda B. Endress, and John H. Goff, and on bill and disclaimer as to the defendant John T. Bernier, and the bill of complaint having been taken as confessed by the defendants Mary B. Endress and Alfred Bernier, and the same having

come on to be heard on pleadings and proofs taken in open court and the court having heard the pleadings, proofs, and allegations of the parties and the arguments of counsel, the same was submitted to the court for decision, and the court having considered the same and duly deliberated thereon, and it appearing to the court that the defendant Alfred Bernier has conveyed all his interest in the lands described in the bill of complaint to the defendant John H. Goff, it is ordered, adjudged, and decreed and the court by virtue of its power and authority in the premises doth order, adjudge, and decree that the said complainants are entitled to own and do own — undivided one-tenth each in the lands described in the bill of complaint herein, to wit, the west ten acred off the west side of the southwest quarter of the northwest quarter of section nine (9) and the east fractional half of the northeast quarter of section eight (8), all
54 in town. forty-seven (47) north, range one (1) east, in Chippewa county, State of Michigan, as heirs-at-law of Edward Bernier, deceased, and are entitled to have, occupy, and enjoy the same as tenants in common with the defendants Joseph Bernier, Edward Bernier, Mary B. Endress, Matilda B. Endress, and John H. Goff without hindrance or objection -rom said defendants.

And it is further ordered, adjudged, and decreed that the said defendants do make, execute, acknowledge, and deliver unto the said complainants fit, proper, and sufficient deed or deeds of conveyance in form, tenor, and substance and effect sufficien- ro convey to and vest in said complainants the interest and portion in said lands and premises as hereinbefore defin-d and determined in this decree, to wit, an undivided one-tenth part each of said lands and premises, within sixty days from the date of the entry of this decree.

And it is further ordered, adjudged, and decreed th-t if said defendants make default or neglect or refuse to execute, acknowledge, and deliver deed or deeds of conveyance as herein-efore ordered and decreed to said complainants, then that this decree do stand for and h-ve the full force and effect of a conveyance from said defendants to said complainants of their respective interest as hereinbefore defined, and that upon a duly certified copy of this decree being presented to the register of deeds for Chippewa county that the same be recorded as a conveyance and to stand in lieu thereof.

And it is further ordered, adjudged, and decreed that t-e said complainants do recover from the said defendants Edward Bernier, Matilda B. Endress, Mary B. Endress, and John H. Goff their costs to be taxed, including therein the fees and expenses of the stenographer, as stipulated between the parties, and that they have execution thereof.

Dated this 19th da- of June, 1888.

J. H. STEERE,
Circuit Judge.

GEORGE W. BROWN, *Clerk.*
BRENNAN & DONNELLY,
Solicitors for Complainants.

(Endorsed:) Filed June 23, 1888. Geo. W. Brown, register.

Costs taxed July 19, 1888, at $77.02 by consent of counsel.

55 STATE OF MICHIGAN:

The Circuit Court for the County of Chippewa. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH BERNIER, MARY BERNIER ENDRESS, Matilda Bernier Endress, Edward Bernier, and John H. Goff, Defendants.

And now comes the said defendants Matilda Bernier Endress, Edward Bernier, and John H. Goff and hereby claim the benefit of an appeal to the Supreme Court from the decree rendered in said cause by said court upon the 19th day of June, A. D. 1888.

GEORGE A. CADY,
Sol'r for Def'ts Endress, Bernier, and Goff.

To Geo. W. Brown, register of said court.

(Endorsed:) Filed July 17, 1888. Geo. W. Brown, register.

Bond duly approved by circuit judge & filed July 17, 1889.

56 *Case.*

STATE OF MICHIGAN:

The Circuit Court for the County of Chippewa. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH BERNIER, MARY BERNIER-ENDRESS, Matilda Bernier-Endress, Edward Bernier, and John H. Goff, Defendants.

This was a suit in equity brought by the complainants, who are five of the ten children of Edward Bernier, deceased, and who were of the age of twenty-one years and upwards at the date of their father's death. The defendants (except defendant Goff) are the remaining five children of said Edward Bernier, deceased, and who were at the time of their father's death minors, and defendant Goff is a grantee of defendant Alfred, and holds his interest in the controversy.

The purpose of this suit is to establish under section 2291
56½ Rev. St. U. S. the complainants' alleged title to an undivided one-half interest in the property described in the 11th paragraph of the bill of complaint. The defendants hold the legal title to the property in question under a United States patent made to the minor heirs of Edward Bernier, deceased, and issued under the provisions of an act of Congress, approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain;" and the defendants contend that the patent issued in accordance

with law and that, where both father and mother are dead, the fee in the land inures exclusively to the minor children under section 2292 Rev. St. U. S.

The court is asked by complainants, among other things, to find that the patent should have been issued to the heirs generally of Edward Bernier, deceased, and that it was by error of law issued to the minor heirs, and to decree that defendants hold the title in trust for the benefit of the ten children and their grantees as their rights appear, and subject to the alleged rights of complainants to an undivided one-half thereof.

The defendant Joseph Bernier answers and disclaims; Alfred Bernier and Mary Bernier-Endress suffer default; defendant Goff files a separate answer; Edward Bernier and Matilda Bernier-Endress file a joint and several answer. Replications are filed to the several answers.

The issue came on to be tried in the said court before the Honorable Joseph H. Steere, circuit judge of the eleventh judicial circuit of Michigan, and by stipulation the examination of all witnesses in this cause was had in open court as in a suit at law.

57 The testimony was taken and the cause argued and submitted at a session of the said court held at the city of Sault Ste. Marie, in the said county of Chippewa, on the 19th and 20th days of March, 1888, and was thereupon taken under advisement by the court until the 10th day of April following, when in vacation said judge filed with the register of the court a finding or decision to serve as the basis for a formal decree, and thereafter and on the 19th day of June, 1888, following, the solicitors for the respective parties appearing and offering their suggestions in the premises, a decree for complainants, which appears in the cause, was settled and signed by said judge, and thereafter, on the 26th day of June, was duly countersigned and filed by the register of said court.

The solicitors for the complainants on the trial of the said cause presented, offered, and introduced the following evidence and testimony:

Certified transcript from the General Land Office, at Washington, marked "Plaintiffs' Exhibit A," offered in evidence.

Objection is made on the ground that it is incompetent, irrelevant, and immaterial.

Transcript received in evidence.

See Defendants' Exhibit No. 6.

Certified copy of the patent offered in evidence and marked "Plaintiffs' Exhibit B." See Defendants' Exhibit No. 1, the original patent.

GEORGE W. BROWN is sworn and testifies: I reside in Chippewa county and act as attorney. I am at present holding the office of register of deeds and county clerk. I have practiced in this county

58 more or less since 1862, the last twenty-five years. I knew Edward Bernier in his lifetime. I first became acquainted with him twenty-seven years ago in March. He was then residing here in Sault Ste. Marie. I do not know that I can give the

exact date of his death. It seems to me it was in '76, in May or June. I acted for him in a professional capacity. I attended to all his legal business from the time I came here until he died, and after his death I acted professionally for the heirs. I had something to do with the proceeding to commute the Bernier homestead and I know the land in question in this suit. Bernier was going to commute the homestead the week he died; made all the arrangements to commute, and if he had lived another week his papers would have been in. After his death I took the steps for the heirs through Samuel Bernier. I got the latter to make the application to prove up for the benefit of the heirs. It is before Mr. Carleton, I think. He was acting county clerk at that time. I refer to Samuel F. Bernier, one of the heirs of Edward Bernier, deceased. I do not know when Edward Bernier went onto the homestead. I know he was on it when I came here, twenty-seven years ago. He had got a clearing and a house on it—that is, on this east half of the northwest quarter of section eight—and there was John Baptiste La Londe on the other forty and John M. Johnston held lot number two. They were all under pre-emptions and all had improvements on the pieces. At the time of the death of Edward Bernier he was in possession of the land described here; always had been. He was cultivating. He put in a crop that spring. The day he was taken sick he was at work on a fence on claim one hundred and
59 twenty-four, the present property of Mr. Seymour, but the day before that he was at work on his own. I then lived down below there and was coming back and forth every day twice. I acted for the heirs in the commutation proceedings and advanced every dollar that is paid on it, too—that is, my wife did; would not have deeds of it to-day if I had not done it.

Q. Do you know who continued to reside on the property afterwards or continued to occupy it?

A. Yes; Louis was appointed guardian of the children and administrator of the estate.

Q. Guardian of the minors?

A. Yes; and he went onto the place and the minor children—I am not certain whether they went on with him or lived in the blue house up here, but he took care of them, and after a year or two George took it by some agreement between themselves, but I did everything in connection with getting out the papers.

Objection is made to that portion of the witness' testimony in regard to the administratorship and guardianship by Louis, and it is moved that it be stricken out as incompetent. It is stricken out. Exception noted for complainants. Witness is shown a paper purporting to be an agreement between the heirs and George about going into possession of the land and is asked if he can identify it.

A. Yes; this is the contract between the parties that I drew up.

Q. Is that in your handwriting?

A. Yes; there are very few papers in the case that I did not draw.

60 Objection is made to the paper, as it is a paper made by the complainants and it is not signed by any of the minor heirs, and as incompetent, irrelevant, and immaterial. Objection overruled. Exception noted for the defense. Contract received in evidence and marked " Pl't'ffs' Ex. C."

Q. Was that contract executed in your presence, Mr. Brown?

A. No; I don't think it was, but the signatures are all right. I know the signatures of Louis, George, Calixte, Sam., and Mary, but I don't think that was executed before me. If it was I should have witnessed it. Louis was the guardian and administrator at the time he made that agreement with George.

Objection is made to the witness stating about the guardianship.

Q. Do you know, Mr. Brown, anything about George going into possession?

A. Yes, sir; he had gone into possession before that agreement was made and I suggested that they have such an arrangement. The idea was that Louis was guardian and he did not want to take charge of matters any longer and wanted George to take charge, and the agreement was in consequence of the change. I think I had nothing to do with forwarding the papers in the commutation proceedings. The proof was made before Mr. Carleton, and usually the party before whom proof was made forwards the proofs. I was there, but have no recollection of forwarding the papers.

Q. Who received the patent from Marquette?

61 A. I don't know. I know I found it two or three years after on record—the shape it was in. I presume it came from Mr. Carleton. I know where proofs are made before me they always come to me.

Q. Now, with reference to this agreement that has been offered in evidence, state whether or not that was brought to the attention of the younger children or whether they talked about it.

Objected to as immaterial.

A. Well, I could not say, as I do not remember, because I did not witness that agreement and was not present when it was signed. I do not remember of any consent on their part so far as this agreement is concerned; in other matters they were consulted.

Q. What about?

A. In regard to the general disposition of the property, especially Mary. She was the oldest of the minors, and was a sort of leading one.

Q. She was the oldest of the sisters?

A. Yes; and the oldest of the minors, and she had charge of these children—that is, the balance below her—and I think she was always consulted and they were present—they were younger—in almost every business transaction, in selling off pieces of property; that place of Mr. Seymour's was sold off to pay debts, and the corner where Mrs. Lambert owns was sold off to pay debts, and as I managed the whole thing the matter was always talked over. At the signing of the agreement between the children and myself with re-

gard to getting the money they were all present. Mary will recollect that was talked of in their presence. As a rule these matters were always talked over.

Q. Subsequently to the patenting did Mrs. Brown acquire title to any of this property?

62 A. Lot number two John M. Johnston was in possession of, and he sold to Mr. Barbeau, and Mr. Barbeau sold the front, and a part of that lot number two extends into claim 128. The assessment was paid and a certificate granted, and all of lot number two that is in claim 128 was deeded from Johnston to Barbeau and from the latter to my wife. There is only eleven acres in claim two and the balance is in claim 128.

Q. How about the southwest quarter of the northwest quarter of section nine?

A. That was a pre-emption claim of B. La Londe, and that my wife and Mr. Bernier bought out; gave him $100—that is, Edward Bernier in his lifetime.

Q. Subsequently did the Bernier heirs convey to Mrs. Brown any portion of that eighty acres?

A. Yes; I think eight of them deeded to my wife. There were all the older heirs and Mary, Joseph, and Alfred. I think the deeds from the heirs and Mrs. Brown were made somewhere about the time—well, from 1882 along at different times. It was a considerable time subsequent to the patent. There was an agreement upon the part of the heirs of age to deed, which was duly acknowledged, and they agreed that the minors should deed as fast as they became of age.

Q. Who agreed to that?

A. That was at the time of the commuting and paying for the land; at the time my wife advanced the money.

Q. Did some of the younger heirs deed after they became of age?

A. Yes, sir.

63 Q. State whether or not the younger heirs knew of this agreement on the part of the older heirs and acted under it in deeding it to Mrs. Brown.

Objected to as immaterial.

A. Yes; it was all understood between these heirs, and they never made any objection or paid any taxes or objected to my fencing it in, grubbing it out, etc., and they were there, back and forth, all the time.

Q. You say you got deeds from all the older heirs?

A. Yes; I think so.

Q. They gave you deeds assuming to convey their interest in this land covered by this patent?

A. Yes; all the interest that their father agreed to convey to my wife. There was some sort of an understanding between them, I found out afterwards.

Cross-examination:

Q. Who first suggested the idea of proving up this homestead after Edward Bernier died?

A. Well, I can't tell you. I don't know whether I did or whether Louis or Sam. Bernier did. I know we had made all calculations to prove it up, and would, if Mr. Bernier had not died when he did.

Q. You do not remember which one came to you and took charge of conducting the proofs?

A. There were several of them. It is my recollection that I urged to have it closed up myself.

Q. This contract you speak of, made with the older heirs, in which they undertook to covenant that the minor heirs should sign as fast as they became of age, was made about that time?

64 A. I think it was made about that time; I am not certain. But it was made along about that time, because they had to have some money to commute with. The estate had no money, but a good deal of property, and this piece they wanted to close out, and I think it was up at the blue house. The children, I think, were all there, and this question of having the money was brought up, and they thought they could borrow it somewhere and Sam. tried to raise the money, but could not; but the proof had been made at that time, I think.

Q. How much did you or Mrs. Brown advance? The necessary amount to get out the patent?

A. Yes; we had to pay just as though we had got the whole of the lot. Now, for instance, on this strip there is only 63 acres, and we had to pay for the entire 80; and on lot 2, where there is about 11 acres, we had to pay for the 35. She paid the Government price to Edward Bernier on lot 2—35 acres at ten shillings an acre, the full price—but it had to be homesteaded. We could not take it as a pre-emption. Then she took a receipt, which is a matter of record for her receipt in full. She paid all she ought to pay, and he agreed to deed back; then when he came to commute she had to pay that all over again, and did so, and paid for the heirs the full one hundred dollars. She paid more than that.

Q. Did she pay one hundred dollars or all that was necessary?

A. She paid all that was necessary to commute the whole thing, in all about one hundred and ninety-four dollars, I think.

Q. To whom was this then paid?

65 A. At first to Edward Bernier.

Q. But after he died to whom did she pay the hundred and ninety-four dollars?

A. To Mr. Carleton to send up to get this certificate.

Q. At whose request?

A. I do not know. I think at my request. I wanted it straightened up to save my wife's interest. The talk in regard to that advance was at the blue house, as I told you before.

Q. Was any part of this one hundred and ninety-four dollars paid by Mrs. Brown upon the consideration with the older heirs that the minor heirs should make a deed when they became of age?

A. Yes; the one hundred dollars was. There was a consideration only in regard to the one hundred dollars. That is what the agreement was on—that they were to deed when they became of age ten acres in addition. I stated that my wife bought the La Londe lot and paid equally. They were each entitled to one-half of that. That was the understanding.

Q. Now, when this question of proving up came, then, in this agreement, Mr. Louis Bernier says he will give your wife ten acres more if she will advance this additional one hundred dollars. Now, that is a part of the consideration, and the rest of it was in Mr. Bernier's agreement. Mr. Bernier agreed to deed only lot 2 and the east half of this forty acres that they bought from Mrs. La Londe. She was a widow then. There had been a contract made between Bernier in his lifetime and your wife?

A. Yes, sir.

66 Q. And after he died another agreement was made between your wife and the older heirs, including ten acres more?

A. Yes. That was after the proving up and before the money was sent to Marquette. At any rate that was the understanding.

Q. And that was the way the one hundred dollars came to be paid upon account of this homestead patent?

A. Yes, sir; and that was the agreement. That ten acres then was probably worth $40; not over that.

Q. You acted as attorney for the parties who were proving up during the whole season?

A. Yes; did all the business, except just the swearing, I suppose.

Q. You acted as attorney?

A. Yes; all the attorney that there was needed; don't know but what I was a witness in the case; never looked it up.

Q. You say Mr. Carleton put this patent on record?

A. I don't know.

Q. Who was register of deeds?

A. I was deputy when the patent went on record.

Q. Who was register?

A. I think it was Oren Lyon; but who obtained that patent and who put it on record I could not tell you, because I never knew until this question came up that it ran that way; because I had notice and supposed it came to all the heirs under what we call the pre-emption act.

Q. You have no recollection about endorsing it when it went on record?

67 A. I would not say whether I did or not, but, of course, my impression was that it came just as we proved it.

Q. Have you any recollection of seeing it?

A. No, sir; I might have seen it, but do not recollect.

Q. How long after the patent went on record did you see it the first time?

A. It was when this question came up of buying these interests and trying to cheat somebody out of it.

Q. You first saw the patent in 1883 or 1884?

A. That was the first time I examined it—when the minor heirs were trying to get hold of it.

Q. In 1883 or 1884 did you see the original patent?

A. I do not know that I did.

Q. Have you ever seen the original patent?

A. Not to my knowledge. I don't think I ever saw it.

Q. Well, in the regular course the patent would come here from the Marquette office?

A. No, sir.

Q. From where would it come?

A. It would come to the party before whom the proof was made on the certificate.

Q. Would it come from Washington direct to the party?

A. Mr. Steele, here, if it was made before him he would send it up——

Q. You don't understand the question. Would it come from Marquette?

68 A. Yes; and usually to the man before whom the proof was made.

A paper purporting to be the original patent is handed to witness and he is asked—

Q. Do you recognize that patent?

A. Yes; I recognize my signature. There is no question about my receiving it.

Q. That is your signature on the back?

A. Yes, sir; "Geo. W. Brown, register of deeds."

Q. What is your recollection of the other endorsements on the back of the patent?

A. I have no recollection at all.

Q. Do you know in whose handwriting that endorsement is at the top of the patent?

A. I am not sure, but I know it is not mine.

Q. Do not recognize it as anybody's?

A. It looks to me like the handwriting of one of the land officers up there—Mr. Stafford.

Q. At Marquette?

A. Yes, sir; it looks like it. I know it is not mine. I receive and file that way thousands of deeds and do not take any notice of them. I endorse most of the deeds that come into the office, but I do not say I did not see it. I have no recollection. I say positively that the first time I knew it was the minor heirs and that the patent ran to the minors was at this time. I have no recollection of making the endorsement, but I did make that endorsement, as it is my handwriting.

The patent is offered in evidence and marked "Defendants' Ex. 1." Witness says the instrument is dated the 5th day of June, 1877.

69 Mr. Lyon was not register at the time; it was C. S. Barker. I was deputy under him, and then came Mr. Lyon, but neither of them, after I took the office, ever signed any papers. I signed all the papers that came in and went out.

Q. You say that at the time George Bernier went down and went into possession of the place. How about that written contract?

A. I think he was in possession when that was made. He and Louis had an understanding.

Q. George went down there with his family or did he go alone?

A. George took the children—I don't know—they might have been there at that time. It seems to me they were all living up at the blue house up to this time. When George went down, if the children were not already there, he took them. They were down there with him. I do not think he took them when he first took possession.

Q. Did they go down soon after that?

A. I saw them down there.

Q. They made that their home?

A. Yes; I saw them there.

Q. Were the two daughters, Matilda and Mary, then at home unmarried? Was Matilda at home with George?

A. I think she was.

Q. And Mary?

A. I think Mary went down, but would not be certain.

Q. Both unmarried?

A. Yes, sir.

Q. Were the other three children there?

70 A. Yes, sir; I saw them there. I know they were down there at times. They had a house up here, and they had been living in it, but I know George went down and took possession, fixed up the fences, made some improvements, and put in crops.

Q. Made it his home?

A. Yes, sir.

Q. Do you know who kept house for him?

A. I do not know unless it was his sister.

Witness is shown the record of a patent on page 212, Liber 6, of Deeds and asked:

Q. Do you know in whose handwriting that is?

A. Well, it looks to me like Covell's, but I am not certain. Covell is a man who used to be here on the canal. I know it is not mine.

Q. In whose handwriting is this signature over "deputy register"?

A. It is mine. I go right through and sign these. I do not read the deeds.

The record is offered in evidence and received without objection. (Remark: This is the record of the homestead patent in question, with the usual clause at the top wherein to note the time of receiving the document in the register's office, and is signed "George W. Brown, deputy register.")

Q. You don't know whose writing that is?

A. I think it is Mr. Covell's, but would not be sure.

Q. Was this money, this one hundred and ninety-four dollars, or

whatever was necessary to get out this patent, ever repaid to you or Mrs. Brown?

71 A. No, sir; not a cent of it. The only possible consideration there would be is that instead of getting half of that 40 acres we were to get the east 30 acres instead, as all the other ones signed in accordance with that agreement that I have referred to. I had always done Mr. Bernier's business, and he was owing me, I think, about — hundred dollars when he died, and then I did all this work, and all I got for all the work was one hundred dollars. That was from Louis Bernier, administrator, and I attended to all the closing up of the estate. It was a compromise and I took that.

Q. When the proofs were made for commuting the homestead do you know how many sets of proofs were sent forward to the land office?

A. I don't know of only one.

Q. When was that sent forward?

A. At the time he made the proofs.

Q. How long a period did the proof-making cover? Was it done at one sitting or one month?

A. Yes; they gave notice and the proofs were all put in in one day. The proofs should be made the same day, I think. That was made before Mr. Carleton; at least that is my recollection.

GEORGE E. BERNIER sworn:

Q. Mr. Bernier, you are one of the parties to this suit?

A. Yes, sir.

Q. Where do you live now?

A. I live on the old mission farm.

Q. On the same land in controversy?

A. No, sir; further down, about two miles.

72 Q. Do you remember when your father died?

A. I was within about three rods of him when he was taken sick.

Q. You were in the same place?

A. Yes; sowing grass seed.

Q. At the time of his death was your father occupying this land in controversy?

A. Yes; was sowing grass seed on the very same ground.

Q. Have you occupied that property since your father's death?

A. My brother Louis occupied it after father's death.

Q. Until when?

A. Some time in March, 1879.

Q. What for?

A. For the general support of the house.

Q. Of the heirs?

A. Yes, sir.

Q. Now, about your being in possession, when did you go into possession?

A. In March, 1879.

Q. What did you do?

A. Worked it, cultivated it, paid all taxes, repaired all the fences, kept it in good shape, and raised crops on it.

Q. You yourself attended to it?

A. Yes, sir; until last year I got the last crop off it.

Q. Got a crop off it last year?

A. Yes, sir.

Q. When did you first learn, Mr. Bernier, of any claim
73 being made that the five children who were over 21 at the time of your father's death had no interest in this place?

Objected to as incompetent, irrelevant, and immaterial.

A. I think it was about the time that Fred. sold to Mr. Goff; it was about in 1885; I think the fall of 1885.

Q. How did you learn that this claim was made?

A. Some of the boys, I think it was Edward, told me of it first; Edward or Fred., I don't know which.

Q. Now, had you ever had any talk among the heirs about dividing up the estate?

A. Yes, sir.

Objection is made to all this class of testimony.

Q. Was there ever any talk among you about the division of this farm?

A. Yes; often of late years.

Q. You had frequent conversations about the division?

A. Yes; it was said that the place was big enough to give a good home to all.

Q. Who do you mean by all?

A. The whole ten.

Q. With whom did you talk?

A. With the whole of them. They were living on the place with me.

Q. You went to the place and lived on the place?

A. Yes, sir.

Q. When?

A. The 27th or 28th of April, 1879.

Q. And all the children you have had down there, except those who had homes of their own?

A. Yes; except Louis, I think.

Q. How long did Edward remain there?
74 A. About a year.

Q. Did he go back there frequently after going away to work for himself?

A. Yes; he came back to visit.

Q. Did you have any talk with Edward about this agreement?

A. They all talked it over. The agreement was made in Mr. Brown's office and was brought over there, and my sisters, and I believe William, signed it in the house, and the others signed it in Mr. Brown's office.

Q. Now, Mr. Bernier, from the time you went in there under that agreement until the time the claim was made that the older heirs

were not entitled -- their share did any of the children older or under 21 object to your being in possession under this agreement?

A. No, sir.

Q. How adjacent is this property to Portage street—how near to it?

A. Just about eighty rods.

Q. Front on any street?

A. Yes; it fronts on Spruce. It is on the north end of the Shunk road.

Q. House on the property?

A. Yes, sir.

Q. How long has it been there?

A. I think the last house was put up in 1875.

Q. That is the time your father homesteaded it?

A. Yes, sir; about that time. I drew all the lumber for it and helped to build it.

Q. And that was the house you occupied?

A. Yes, sir.

Q. How long did you live on the place?

75 A. A little over two years.

Q. Where did you go then?

A. To the place where I am at present.

Q. After you lived on the lower place you continued to cultivate and occupy this farm?

A. Yes; and built nearly three-quarters of a mile of fence on it after that. There was only a piece of fence on it, and I fenced in the whole of it.

Q. Did you have any talk with Mr. Goff about this property?

A. Not lately that I remember.

Q. At any time?

A. At one time he was going to be my attorney to settle it for me.

Q. That is, to settle the estate?

A. Yes, sir.

Q. What do you mean?

A, I mean I wanted a good, square, honest settlement, and I wanted an attorney so there would be no mistakes.

Q. A division among the heirs?

A. Yes, sir.

Q. Was this before or after he got the deed from Fred.?

A. Before.

Q. Was anything said between you about the property in controversy in this suit?

A. I do not remember, except that he told me George W. Brown had no claim on it; that the contract was no good.

76 Q. That conversation, then, had reference to the claim that Mrs. Brown had in reference to this portion of the homestead?

A. Yes, sir.

Q. Did you talk with him about the homestead?

A. I do not remember now what he did say, but I remember that very well.

Q. Did you talk about the homestead as though it belonged to all the heirs?

A. Yes, sir.

Q. In talking about this property and Mrs. Brown having a contract, did that conversation arise with him when you were talking about dividing the property?

A. Yes, sir.

Q. Was anything said about this particular land being divided among the heirs?

A. Yes; there was something said. I do not remember just what it was.

Q. Did you talk over the different pieces of property?

A. Yes; he had the patent and has had the patent in his possession ever since.

Q. Did you hand him the patent?

A. Yes, sir.

Q. Did you have any talk with him specifically about all the ten heirs owning this particular piece of property?

A. Probably we had, but I have no recollection of it.

Q. Was anything said to Mr. Goff at this time about your living on the place?

A. No, sir.

77 Q. State whether at the time you left the papers with Mr. Goff you left the agreement under which you went into possession with him.

A. Yes, sir.

Q. How did you afterwards get it?

A. I thought he was playing a kind of a trick on me and I went and got them. He told me to leave them there, he wanted a copy, and I left them there. He said he wanted to keep the patent, as there might be a suit, and he wanted the record.

Q. And he kept the patent and returned the other papers, including this agreement with the heirs?

A. Yes, sir.

Q. Who first made the claim to you that the older children were not entitled to any portion of this property?

A. I think Ed. or Fred. Some of them told me on the street here, but they said it would be divided equally anyway.

Q. It did not make any difference about the patent. Would divide it equally anyway?

A. Yes, sir.

Q. Did you have any talk with Edward?

A. Not lately. We have talked, but not about the patent.

Q. During the time that Edward lived with you what claim, if any, did he make?

A. No more than the rest of them.

Q. Who paid the taxes on this property from the time of your father's death?

A. I did. It has been assessed to the estate of Edward Bernier; except this year I have not.

78 Defendants make a general objection to the evidence showing the payment of taxes by the complainant on the property in question as incompetent, irrelevant, and immaterial.

Q. Who is Mr. Hoel D. Rains?
A. A real-estate man here.

Witness is shown a paper and says, That is the deed he made back to me last spring.

Q. You had that deed in your possession?
A. Yes, sir.

(The deed is offered in evidence and marked "Plaintiffs' Exhibit D.")

Q. You had nothing to do with the making of this proof for commutation, this proof that was made by Samuel to get the patent?
A. No, sir; I was in the woods at that time. They wrote me about it, and I told them to do the best about it they knew how.

Cross-examination:

Q. Did you advance any money to Samuel F.?
A. No, sir.
Q. In regard to this homestead?
A. No, sir.
Q. You say the conversation you had with defendant Goff about the property, you think, was before he received the deed from Fred.?
A. Yes; I know it was before—a year or two before.
Q. Do you know whether he had more than one deed from Fred.?
A. No; I do not.
Q. You supposed he had one?
79 A. Yes; I supposed so; I never looked up the record.
Q. Do you know what land the deed from Fred. covered?
A. No, sir; I never saw the record and do not know.
Q. You brought this patent yourself to Mr. Goff's office?
A. Yes, sir.
Q. At the time you had this talk?
A. Yes, sir.
Q. Was he asked about this patent?
A. I do not mind much about it now; it is so long ago, and I never expected any trouble, so I do not exactly mind. The remark about Brown is all I remember.
Q. How did you come to take the patent there?
A. Because I wanted him to be my attorney to settle the estate.
Q. How long had you the patent when you took it there?
A. I think it was turned over to me in 1879 from Louis with the rest of the papers.
Q. About the time you went down to the farm a lot of papers were handed over to you by Louis?
A. Yes, sir.
Q. And you supposed this patent was among them?
A. Yes, sir.

Q. Had you seen this patent before it was handed over to you by Louis?

A. I saw it when handed over to me. I noticed it was a patent; that is all I know. He handed me the papers in a box, and that is all I know about it.

80 Q. You noticed the patent?

A. I noticed it afterwards in looking it over.

Q. Had you not looked over the papers since Louis handed them to you — 1879 until you spoke to Mr. Goff?

A. No; because I had no use.

Q. During that time did you know there was a patent among the papers?

A. Yes; I knew there was ten or fifteen among the papers.

Q. Did you hand all the patents to Mr. Goff?

A. No; only that one.

Q. You selected that one out, did you?

A. Yes, sir.

Q. You did not take the other patents up to the office?

A. No.

Q. You selected out this one at your home?

A. Yes, sir.

Q. When you selected out this patent did you know it covered your father's old homestead?

A. I knew it was a patent of the homestead.

Q. To the best of your recollection had you ever examined it until you took it up to Mr. Goff's office?

A. That is all I remember about it.

Q. You read the patent, did you?

A. No, sir.

Q. When you picked it out?

A. No, sir.

Q. How did you know it was the homestead?

A. I can pick out the patent, but to read it right out I cannot do it.

Q. Then how did you know?

81 A. I can pick it out, but to read it I can't.

Q. You looked it over?

A. Yes; enough to know it was the right patent.

Q. You looked over the rest?

A. Yes; I looked them over until I found the one I wanted. I was two hours looking for it.

Q. You did not consult him in regard to the other lands?

A. Yes; I wanted him to act as attorney for me for all the lands.

Q. Why did you not take up the other patents, relative to other lands?

A. Because I had deeds issued later than the patents, so had no use for the patents.

Q. When you went down to the homestead in 1879 where or on what part of it did you go to live?

A. On section 8.

Q. Is the house standing now?

A. Yes, sir; the same place where it stood at that time, only I put an addition to it and fixed up the house.

Q. Is that on the 40?

A. It stands about the northeast of the northeast of eight, just a fractional quarter as you see it here.

Q. It is on eight, is it?

A. Yes, sir.

Q. You took with you the minor children?

A. Yes, sir.

Q. Were you married at that time?

A. Yes, sir.

Q. How long had you been married?

A. In February; that was in March.

82 Q. The same year?

A. Yes, sir.

Q. You went down and commenced keeping house?

A. Yes, sir; with the two sisters, and Ed. and Fred. and Sam. and Joe were all down there.

Q. That was the family home, was it?

A. Yes; it was the family home. They could stop with me as long as they wanted to.

Q. Before that the family had been up here in town?

A. Yes; in the blue house, they used to call it.

Q. You had been away lumbering?

A. Yes; a couple of years.

Q. Longer than that?

A. Just about two years; went away in the summer of '77 and came back in the fall of '78; went away in August of '76.

Q. Were Matilda and Mary unmarried?

A. Yes, sir.

Q. How long did they continue to live with you on the homestead?

A. Until they went and got married.

Q. How long did Mary live with you?

A. Until some time in the fall; she got married.

Q. How long did Ed. stay with you then?

A. Ed. was there off and on all summer and wintered with me that winter.

Q. The winter of '79 and '80?

A. Yes, sir.

Q. Where did he make it his home in the summer of '79?

83 A. I believe he stopped there awhile and sometimes in town; part down there and part up here.

Q. Do you know where he regarded his home?

A. Down there, as I supposed at the time.

Q. Where did he go after the winter of '79 and '80? Edward, I understand, left the place down there after staying with you the winter of '79–'80.

A. After the winter of '79–'80; yes. He stopped with me until spring, and went away on a tug.

Q. Did he ever make his home there again?

A. No more than a visit.
Q. He shifted for himself after that, did he not?
A. Yes, sir.
Q. He was still a minor when he left?
A. No, sir; he was of age in 1879.
Q. Did Joe live with you down there?
A. Yes, sir.
Q. How long?
A. A little over two years.
Q. Was he there with you when you left the homestead?
A. Yes; he lived until about a year or a year and a half after that with me.
Q. Did not Matilda go away before she was married somewhat?
A. Yes, sir.
Q. Where?
A. To Mrs. Endress, at Whitefish Point. Mary took her up for company.
Q. About when did Mary and Matilda leave?
A. In the fall of '79.
Q. Did Fred. go down there and live with you?
84 A. Fred. lived there that spring of '79 with me.
Q. Did he go away then?
A. I do not know how long he did stay there.
Q. Did he stay there all the time you were on the homestead?
A. No; I guess he stopped just that spring, and went off some time in the summer or in the spring; I don't remember just which.
Q. Did he ever make this his home there afterwards?
A. No, sir; he came around once in awhile and visited; probably stopped a day or so.
Q. What education did you give the children while they lived with you?
A. They went to school as long as they wanted to and I could drive them. I have often threatened to put them in jail if they did not go to school; gave them all the education I could.
Q. Did Edward go to school at all?
A. No, sir; not while living with me. He lived with me only a few months before he was of age.
Q. Did Mary?
A. No, sir.
Q. Did Matilda?
A. No, sir: she would not go to school.
Q. Did Fred.?
A. No; not with me.
Q. Did Joe?
A. Yes, sir.
Q. Where?
A. Here, in the high school, under Professor Wiley.
Q. How long was he in school?
85 A. I think he went to school a couple of years until I could not drive him, and he would not go.

Q. You went to the Mission property about 1881?
A. Yes; about that summer.
Q. In the summer of 1881?
A. Yes, sir.
Q. Did you ever live on the homestead after that?
A. No, sir; only worked the place.
Q. You say you paid some taxes. Where did you get the funds?
A. Out of my own pocket.
Q. Out of your own pocket?
A. Yes, sir.
Q. Can you give any estimate of about how much taxes you paid on the homestead?
A. No, sir; I never kept track of it.
Q. While you were on the place there you took charge of everything?
A. Yes, sir.
Q. Crops and the selling of crops?
A. Yes, sir.
Q. And the handling of the money?
A. Yes, sir.
Q. After you moved onto the Mission in 1881 did you still crop the homestead?
A. Yes, sir.
Q. You had the management of it then?
A. Yes, sir.
Q. And the gathering of the crops?
A. Yes, sir.
Q. And received the proceeds?
A. Yes; but very little. It never paid the expenses.
86 Q. It did not pay the expenses?
A. No, sir.
Q. What were the expenses besides taxes?
A. To pay the expenses of working the ground and all the fences I built. I did not get my money that I put in. There was only a small piece of brush fence when I went onto it.
Q. When you went down there in the spring of '79 you took considerable property that belonged to the estate?
A. I took what this paper called for.
Q. You took whatever property is referred to in this contract?
A. Yes; that I had in charge.
Q. Did you have any list of the stuff you took down?
A. Yes; there is one.
Q. There is a list somewhere?
A. Yes, sir.
Q. Have you possession of it?
A. It is here on file somewhere. I think our attorney has it.
Q. Do you remember what there was of that stuff?
A. Yes; pretty much all of what there was of it.
DONNELLY: You may look at this, Mr. Bernier, and see if that is the list.
—. Yes; that is the list.

CADY:

Q. That is an inventory, is it, of the stuff you took when you went down there in the spring of 1879?
A. Yes; that is the one.
Q. A couple of horses?
A. Yes; a couple of old horses.
87 Q. Valued at $120?
A. I guess they were valued at that much.
Q. A double wagon?
A. Yes.
Q. Valued at $15?
A. Yes, sir.
Q. And a mowing machine valued at $50?
A. Yes, sir.
Q. And a harrow valued at $5?
A. Yes, sir.
Q. A set of harness?
A. Yes, sir.
Q. Valued at $5?
A. Yes, sir.
Q. A dray valued at $22?
A. That dray—I never had it in my possession.
Q. Did you have a post auger valued at $1.00?
A. I think there was a piece of a post auger.
Q. Did you have a grindstone?
A. I think there was.
Q. And an ax; half a dollar?
A. I think there was one.
Q. Was the grindstone valued at a dollar?
A. I just copied it off a list my brother had two years before, and I put the same valuation on them.
Q. Buck saw valued at 75 cents?
A. Yes; could buy a new one for 60 cents.
Q. Did you have a couple of plows valued at $7?
A. Yes; but I think one was my private property.
Q. But you had them on this list?
A. Yes, sir.
Q. And you received the two plows?
88 A. Yes; but I never used it.
Q. One cutter valued at $8?
A. Yes, sir.
Q. Received two cows?
A. Yes, sir.
Q. Valued at $45?
A. I guess they were valued at $22 apiece.
Q. Heifer valued at $10?
A. That is private property; belongs to Louis; has nothing to do with the estate.
Q. But you received it?
A. Yes, sir.

Q. It was turned over along with the rest at the same time?
A. Yes; but it was private property.
Q. Hay press valued at $15?
A. Yes.
Q. Hay fork valued at 25c.
A. I think there was such a thing; not a whole one, but a piece of one.
Q. A single wagon valued at $25?
A. Yes, sir.
Q. Some harnesses and a hay knife.
A. There was some old harnesses there and a hay knife.

The list is offered in evidence by the defendants and marked "Defendants' Exhibit 2."

Q. After you went onto the Mission did you ever receive anything from the homestead over and above the taxes and expenses?
A. I kept working the place and kept everything in repair and took off whatever was raised on it.
89 Q. Did you ever render any account of the matter to anybody?
A. Nobody ever asked me for it.
Q. Did not Matilda leave there because it was unpleasant for her to stay there with your family?
A. That is the first I heard about it.
Q. How about Mary?
A. She got married.
Q. Did not go before she got married?
A. She went on a visit. She came back and stopped home awhile and then got married.
Q. How long after she went away before she got married?
A. Four or five days or a week or so. She went below and got married. I could not tell exactly the time.
Q. Had not she been away a good deal before she came back?
A. She was at Whitefish Point and visiting my brothers in town.
Q. Had not she been making her home away from there some considerable time?
A. Not that I know of.
Q. Besides the Bernier minors and yourself and wife, what other persons were there at the time you were on the homestead after 1879?
A. Sometimes I had a hired man and sometimes I did not have any.
Q. What other members of the family—any of your wife's people there?
A. Sometimes my brother worked for me; sometimes I gave him work a week or a month, whenever I wanted him; sometimes he worked on the tug.
90 Q. Any of your wife's relatives there—your brother-in-law, for instance?
A. Sometimes, but not all the time.
Q. Any other members of your wife's family there except her

brother? Was it after this present suit was commenced that you went to Mr. Goff's office and took away certain papers?

A. It was before that; it was a year ago last fall; early in the fall. I have not been to Goff's office. It was early in the winter when I went there last. They called me in; it is about a year ago.

Q. In what year?

A. Last year; it must have been '87; last March or thereabout; it was before that; I was going by and they called me in.

Q. How many papers did you then take away?

A. I do not recollect.

Q. Did you take away this contract we have been speaking about; is that one of the papers?

A. I think it was.

Q. Is this inventory one of the papers?

A. I think so. I know there was a bunch of papers, and I took them all, and then he wanted them to stop there a day or so, so he could take a copy.

Q. Would you swear you took away more than three?

A. I would not swear I took away more than one or two or three, because I do not know. I know there was a bunch.

Q. Where was Mr. Goff's office?

91 A. I think over La Londe & Roach's store, on Portage avenue. I am not sure, but I think that was where it was?

Q. Positive it was not over Ryan's harness shop?

A. I do not think so. I think it was over La Londe & Roach's. I do not remember for a fact where it was.

Q. When you went to see Mr. Goff about having certain matters settled and took him the bunch of papers, amongst which was this patent, where was his office?

A. Well, I don't know. I think it was down in the News office.

Q. On Water street?

A. Yes; I think it was.

Q. In what you call the News building?

A. I don't know exactly if it was there, but I kind of think it was.

Q. Did Mr. Colwell have an office there also?

A. I think he did.

Q. Do you remember seeing Mr. Colwell when you took the bundle of papers in?

A. I think so.

Q. Had you not taken these papers to Mr. Colwell before you asked Mr. Goff about it at all?

A. I do not know. I do not remember, but I think these papers were taken to Mr. Goff's to get the copy out of the probate court at that time. I wanted to straighten up all the property so we could have it in good shape.

Q. Do you remember Mr. Colwell taking this bundle of papers and putting it in the safe?

92 A. I do not know which of the two took it. They were there together in the same office.

Q. You wanted to ascertain whether or not certain lands which had already been sold could be got back?

A. I wanted to see how it stood.

Q. Did not you want to find out if they could not be got back?

A. I wanted to find out how the estate stood?

Q. Well, but the land that had been sold?

A. Well, the land that had been sold; these Seymour lots in particular I wanted to get at.

Q. Mr. Goff or Mr. Colwell were to get copies out of the probate court?

A. Yes; to get a copy of everything.

Q. Had these lands been sold through the probate court that you were inquiring about?

A. I think they had.

Q. Did you go into the office where Mr. Colwell and Goff were more than once about this?

A. I suppose I have been in their office fifty times.

Q. About this matter?

A. I do not mind now.

Q. At that time Mr. Goff told you, did he not, that the minor heirs would have to get the land back, if anybody?

A. That I could not swear to. I do not remember much about the transaction of the business.

Q. Would you swear that he did not tell you that it was to be gotten back by the minor heirs?

A. He might have, but I do not remember it.

Q. He examined the patent, did he not?

A. I presume he did.

93 Q. There was nothing further done by you, then?

A. No.

Q. After the probate records were taken there was nothing further done—matters were dropped?

A. Yes, sir.

Q. There was no estate settled or anything further done?

A. No, sir.

Q. Nothing was asked to be done by you or Mr. Goff?

A. No, sir.

Q. You never went to his office again about that business?

A. No, sir.

Q. At the time you went and took away a bundle of papers from Mr. Goff's office he had then become interested in the estate as a purchaser from Fred.?

A. Yes, sir.

Q. When you went to get the papers who did you go for—yourself alone or others?

A. For myself.

Q. Personally?

A. Yes, sir.

Q. I mean at the time you got this bundle.

A. That is what I mean, because there was nothing on record, and I wanted to keep them so as to have them any time they were

wanted; he had a copy of them. I left them there for a day or two so he could take a copy, and that patent he said he had better hold. I told him I did not care much about the patent.

Q. You say you did not take this patent away because you did not care anything about it?

94 A. He said he had better hold the patent because he had an interest in it. I told him I did not care who took care of it, except I wanted it in safe keeping.

Q. Did you ever pay Mr. Goff or Mr. Colwell anything for that matter?

A. They never asked me for anything; if they had sent me a bill I would have paid them.

Q. There was nothing further done?

A. No; there was nothing further done.

Q. Among the papers you took from Mr. Goff's office in this bundle was there an account between Louis Bernier and the estate of Edward Bernier?

A. I think there was.

Q. Have you ever examined that?

A. I believe I have. I do not mind now; never paid much attention to those papers, because I had no occasion to.

Q. You have them still, have you?

A. Yes, sir.

Q. Will you produce them?

A. I believe it is here.

Q. That is the paper, is it; do you recognize it?

(A paper purporting to be the account mentioned above is here shown witness.)

A. I believe it is.

Q. That is your signature, is it?

A. Yes, sir.

The papers is offered in evidence and marked "Defendants' Exhibit 3."

Redirect examination:

95 Q. Mr. Bernier, who occupied the house down on this homestead from the time you moved out up to the present time?

A. There has been different people in it off and on, and last spring there was a fellow by the name of Bell into it.

Q. How did they get in there?

A. I rented the house.

Q. They were in there under you?

A. Yes, they came to me last spring and told me that Mr. Goff and Mr. Cady told him to move his stuff out in the road and he would give them a lease of it.

Q. This was last spring?

A. Yes; I think in June.

Q. You cropped it last year?

A. Yes.

Q. Was the house occupied all the time?
A. Most all the time.
Q. Did the people move in and then out?
A. Yes; about half the time it was occupied and half the time it was not. It is not much of a house to live in in winter.
Q. Did any of the children as they became 21 years of age make any attempt to get possession of the house or attempt to rent it to anybody except this attempt of Mr. Goff?
A. I met him one day last spring and he said he wanted that place. I told him to keep off it; that he had no business there until the estate was settled.
Q. After you moved in and took possession under this agreement, what work, if any, did you do on the place?
96 A. I cleared between two and three acres, broke it up and put it into crop.
Q. What buildings did you put up?
A. A kitchen, 16x20. I plastered it up in shape to live in.
Q. What fences, if any, did you build?
A. I built, I guess, very nearly three-quarters of a mile of new fence.
Q. What kind?
A. Rail and lumber fence.
Q. An ordinary board fence?
A. Yes; 80 rods on the Shunk road and 20 rods between Basil, Paul and I, and nearly a half mile along on the north side.
Q. Did you make any other improvements in the line of drainage or anything of that kind?
A. Nothing more than the general crop perhaps, except on the east side, and I built some fences there, too.
Q. Who is the oldest in the family?
A. William.
Q. Who is next?
A. Calixte.
Q. Who next?
A. Louis.
Q. Then you?
A. Yes.
Q. Then Samuel?
A. Yes.
Q. Who is the oldest of the minor children?
A. Mary.
Q. Who next?
97 A. Ed.
Q. Who next?
A. Fred.
Q. Who next?
A. Matilda.
Q. Then Joe?
A. Yes.
Q. Can you tell me their ages from your recollection?
A. Very nearly, I think; I don't know exactly.

Q. What is your age?

A. 36 next August; I was born in 1852.

Q. What day in August?

A. The 12th.

Q. Now, this list of property that you had here, did you use that in cultivating the farm?

A. Yes; what I could use; most of it I could not use.

Q. Bought new ones?

A. Yes; of my own; those were old things and were no use.

Q. Now, you were asked as to going to Mr. Goff's and inquiring about getting back some property that had been sold and about property that had been sold in the probate court. Was that property that had been sold in the probate court, was that the Seymour property?

A. Yes, sir.

Q. The interest part that was sold in the probate court was simply the interest of the miners; those of age sold their own?

98 A. Yes; I believe they did; I signed a deed myself, but do not mind exactly what it was.

Q. Now, Mr. Bernier, with reference to the piece that was conveyed to Mrs. Brown, do you remember when Mrs. Brown took possession of that and fenced it in?

A. Yes, sir.

Objected to as immaterial.

Q. When did they take possession of that and fence it?

A. I do not know; I know when he moved down there years ago; he built a lot of fences somewhere about 1870 or '71.

Q. Who has been occupying that piece deeded to Mrs. Brown?

A. Mr. Brown; he has his piece and I have mine next and there is a fence between us.

Q. Did you ever hear the younger heirs object in any way to Mr. Brown's occupancy?

A. Just this last year.

Q. Ever before that?

A. Not that I know of; they may have, but they never said anything to me about it.

Q. Never said anything to you about it?

A. No, sir.

Q. Do you know what this item in the account of Louis Bernier, as administrator, refers to as follows, in which he charges the estate: "To amount paid on land first homesteaded and then paid for;" do you know to what that refers?

A. They told me of it, but I was not here at the time. They explained about taking money out of their pocket to pay for the homestead.

99 Q. But of your own knowledge you do not know what that is?

A. I was away at the time. They said they had sold ten acres to Mr. Brown, as they had no money and could not get it any other way.

Q. About Alfred—he went away, you say?
A. Yes; of his own accord.
Q. Where?
A. He was going on a tug, and then to the life-saving station, and then to camp; was gone a year or two, and then came back on a visit.

Recross-examination:

Q. When you were on the homestead in 1879 and later was there any property on Ridge street that belonged to the estate?
A. Yes; there was some right in front of the court-house.
Q. A house on that property?
A. Louis built a house on that.
Q. Did he pay any rent for the place?
A. No, sir.
Q. Was there a piece of property on Water street that belonged to the estate?
A. Not when I took it.
Q. A piece on Portage avenue?
A. Yes; a piece of property I rented and another that Brother William lived in; two houses.
Q. Did William ever pay you any rent?
A. No, sir.
Q. How long was William in the house?
100 A. Pretty near all the time ever since I took charge of it, except one winter.
Q. For about how many years?
A. Four or five years.
Q. Did you ever take any steps to put him out?
A. No; I told him more than once I wanted him to pay something to help pay the taxes.
Q. He never paid anything?
A. No, sir.
Q. But still he stayed?
A. Yes, sir.
Q. What amount did you get for the other house?
A. Sometimes eight, sometimes ten, and other times twelve; I got enough so that I could pay taxes on the others.
Q. Taxes were not very high in those years?
A. No, sir.
Q. Get any surplus over the taxes in the rent on these properties?
A. Probably I did.
Q. What became of that?
A. I took care of it.
Q. You never paid any of these rents over to anybody, did you?
A. Why, no.
Q. This fencing that you did on the homestead was just an enclosing fence?
A. Yes; it enclosed all that belonged to the estate.
Q. Have your cattle on there?
A. No, sir.

Q. Never used it for a pasture?

A. No, sir.

101 Q. Ever rent it for a pasture?

A. Not that I know of. At certain parts of the year you cannot keep it fenced.

Q. What was the object in fencing it?

A. To enclose the whole thing, so as to keep cattle from coming in.

Q. You are now in the milk business?

A. Yes, sir.

Q. And have been for some time?

A. Yes; about a year.

Q. Have not had your cattle on the place?

A. Three or four days last summer.

Q. That is the only time you ever pastured the place?

A. Yes, sir.

Q. In this account, do you know what this item means: "Amount of note, $100, to Calixte"?

A. Yes, sir.

Q. Explain that item.

A. That is some money from the estate, and he gave his note for it.

Q. Has that note ever been paid?

A. No, sir.

Q. You know that that note has never been paid by Calixte?

A. No; he never was asked for it.

Q. You never asked for it?

A. No, sir; did not care to settle anything until everything was got together, and settle everything at once.

102 Q. This piece of land over here on Ridge street that Louis occupied, was there ever any rent collected on that?

A. No, sir. Louis and Calixte occupied it and planted potatoes on it.

Q. Do you know anything about a deed having been given by Hoel Rains to yourself and Calixte, William, Louis, and Samuel?

A. Yes, sir.

Paper purporting to be deed here shown witness, and he is asked:

Q. Do you recognize this as the deed?

A. Yes, sir.

Q. You are familiar with the transaction, are you?

A. Yes, sir.

Q. Was any money paid by yourself to Rains?

A. No, sir; no money paid either way.

Q. Do you know whether there was any money paid by the other grantees in this deed?

A. No, sir.

Q. Then there was not any thousand dollars paid, as far as you know?

A. There was not.

Q. Ten thousand?

A. No, sir; nor fifteen thousand.

Q. Do you know how Rains came to have any interest in the matter?

A. Yes, sir.

Q. How was that?

A. We sold it to him.

Q. What was received by you when you conveyed it to him?

A. We received nothing.

103 Q. It was a voluntary transaction?

A. Yes, sir.

Q. Do you know about when this deed was given by yourself and brothers to Rains?

A. Some time last spring.

Q. Do you know whether property was pretty active at that time?

A. It was after the boom we had here.

Q. It was after the boom?

A. Yes; a few days after.

Q. It was after property had been selling pretty lively here?

A. Yes, sir.

Q. Do you know what the object of that conveyance was?

A. Yes, sir.

Q. What was it?

A. So that they could not sell any further; they sold the water power, and I thought I would fix it so they could not sell any more.

Q. So as to block a sale?

A. Yes, sir.

Q. This deed was put on record at once?

A. Yes, sir.

Q. It was made to be put on record?

A. Yes, sir.

Q. There was an understanding that it should go on record at once, was there not?

A. I don't know much about it; I know there was a contract went with the deed.

Q. A contract made at the same time?

A. Yes, sir.

104 Q. What was the contract?

A. I don't know what the contract is.

Q. Do you know what the substance was?

A. It was that Rains should deed back.

Q. That was not put on record?

A. No; I don't think so.

Redirect examination:

Q. These improvements that you put on the property down there—what is the fact as to whether or not they cost you as much or more as you realized from the occupying of the place?

A. A great deal more than I ever realized from it.

Q. This house on the property that Louis occupied—who built that house?

A. Louis.

Q. Paid for it himself?

A. Yes; it was the understanding to put it there until the estate be settled and the house was his; had nothing to do with the estate.

Recross-examination:

Q. You say your birthday was on the 12th of August; do you know when Mary was born?

A. In '56, I think.

Q. Do you know what month her birthday is?

A. In May, I think.

Q. What day of May; do you remember?

A. No; I think it is some time in May or June.

Q. Was it not the 7th of June?

A. Maybe it was.

105 Q. Do you know when Edward was born?

A. In '58, I think.

Q. What month?

A. June 15th, I think.

Q. Do you know what year Alfred was born?

A. In '60.

Q. What month?

A. The 28th day of May, 1860.

Q. And Matilda?

A. In 1862.

Q. What month?

A. The 24th day of May, I think, 1862—the queen's birthday.

Q. Do you know when Joseph was born?

A. In 1864, I think.

Q. What day and month?

A. I think the 22d day of August.

Q. Do you know when Calixte was born?

A. He was born at Quebec; I do not know when he was born.

Q. Do you know when Samuel was born?

A. In 1854.

Q. What day and month?

A. I do not know what day of the month. I know he is two years older than I am.

Q. Do you know when William was born?

A. In '47, I think.

Q. Do you know how old William is?

A. About 40.

Q. How old is Calixte?

A. I don't know much about it.

Q. Know within a year or so?

106 A. I can probably get within a year or so.

Q. How old?

A. About 39.

Q. About 38?

A. Yes, sir.

Q. And Louis; do you know when he was born?

A. In '59, I think.
Q. What day of the month; do you know?
A. No; April 19, I think.

Redirect examination:

Q. They were all children of Edward Bernier?
A. Yes, sir.

Plaintiffs offer in evidence the tax-roll for the year 1878 for the township of Sault Ste. Marie, page 5, showing the assessment of the east half of the northeast quarter of section 8, town. 47 north, of range 1 east, to the estate of Edward Bernier.

Also entry on page 10 of the assessment-roll of the township of Sault Ste. Marie for the year 1879, showing the assessment of the east half of the northeast quarter of section 8, town. 47 north, of range 1 east, to the estate of Edward Bernier, and in each of the above records the amount of taxes is marked paid.

Also on page 60 of the assessment-roll or tax-roll of the township of Sault Ste. Marie for the year 1880, showing the east half of the northeast quarter of section 8, town. 47 north, of range 1 east, to the estate of Edward Bernier, deceased.

Also the tax-roll of the township of Sault Ste. Marie for the
107 year 1881, showing the assessment of the east half of the northeast quarter of section 8, town. 47 north, of range 1 east, to the estate of Edward Bernier.

Also the assessment-roll for the village of Sault Ste. Marie for the year 1883, showing the east half of the northeast quarter of section 8, town. 47 north, of range 1 east, was assessed to the estate of Edward Bernier.

Also the assessment-roll for the township of Sault Ste. Marie for the year 1884, showing that the east half of the northeast quarter of section 8, town. 47 north, of range 1 east, is assessed to the estate of Edward Bernier.

Also the township assessment-roll for the year 1885, showing the same property to be assessed to the estate of Edward Bernier.

Also page 45 of the assessment-roll for the township of Sault Ste. Marie for 1882, showing the land in question to be assessed to the estate of Edward Bernier.

Defense make a general objection to the admission of the rolls as being incompetent, irrelevant, and immaterial, and that the roll for the year 1883 appears to be in the village roll, and the property was not liable to taxation on that roll.

They are admitted subject to objection.

LOUIS G. BERNIER sworn:

Q. Where do you live?
A. Sault Ste. Marie.
Q. You are one of the complainants in this case?
A. Yes, sir.
Q. You were at one time administrator of the estate of your father?
A. Yes, sir.

108 Q. And also guardian?
A. Yes; of the minor heirs.

The record of the appointment of Louis Bernier as guardian of the minor children, being the order made by the probate court for Chippewa county, is offered in evidence. It is found on record on pages 180 and 181 of Journal No. 1 of the probate court, appointing Louis Bernier guardian of the following-named heirs of the estate of Edward Bernier, deceased: Edward Bernier, Alfred Bernier, Matilda Bernier, and Joseph Bernier.

The admission of the record is objected to as incompetent, irrelevant, and immaterial, and on the following grounds:

(1.) Because the entire record is not offered, but only a portion. The records and files are not offered in evidence.

(2.) Because it does appear that all these minors except one was over 14 years of age, and it does not appear that they made any nomination of a guardian to be appointed for them, and the order appointing the guardian does not purport to be based upon any nomination by the minor heirs who were over 14 years of age. Considered in evidence subject to objection.

Complainants also offer in evidence pages 178 and 179 and proof of publication attached to page 178, showing the appointment of Louis Bernier as administrator of the estate of Edward Bernier, deceased.

The introduction of this record in evidence is objected to on the ground that it is incompetent, irrelevant, and immaterial, and on the following grounds:

(1.) Because the entire records and files in the proceedings
109 are not offered in evidence, but only a portion thereof.

(2.) Because the proof of the publication does not give the court jurisdiction, the affidavit of such publication being made not by the person required by law to make it, said affidavit being made by one of the publishers.

(3.) Because the published notice purports to be a notice in the matter of the estate of Edward Brunier and not in the matter of the estate of Edward Bernier.

(4.) On the ground that the order of the probate judge purporting to appoint Louis Bernier administrator does not require him to give any bonds.

Admitted in evidence subject to objection.

Complainants now offer in evidence the petition of William, Calixte, George, Mary, and Samuel Bernier asking for the appointment of Louis Bernier as administrator of the estate of Edward Bernier, deceased. It is marked "Plaintiffs' Exhibit E."

Also the petition of Louis Bernier asking for his own appointment as guardian of the minors—Edward Bernier, aged 19; Alfred, aged 17; Matilda, aged 15; and Joseph, aged 13. Marked "Plaintiffs' Exhibit F."

Both petitions are objected to as incompetent, immaterial, and irrelevant.

Considered in evidence subject to objection.

Q. The time you sold to Lambert by administrator's sale was there a written contract made between you and Lambert?
A. There was a mortgage.
Q. Any other papers?
A. A Note.
110 Q. Was there a contract?
A. I could not tell you.

The witness is handed a paper-writing purporting to be a contract between Louis Bernier and Mrs. Margaret Lambert, and is asked:

Q. Won't you examine that paper and see if it is your signature?
A. Yes; that is my signature.
Q. Is that Lambert's signature?
A. I guess it is.
Q. Do you write?
A. I can write my name, and that is all.

Witness is shown a paper-writing purporting to be a petition to sell real estate, in the probate court for Chippewa county, in the matter of the estate of Edward Bernier, deceased, and is asked:

Q. Is the name of Louis Bernier, attached to that paper, your signature?
A. Yes, sir.

The contract is offered in evidence and marked "Def. Ex. 4."
The petition is offered in evidence and marked "Def. Ex. 5."

SAMUEL BERNIER sworn:

Q. Where do you live, Mr. Bernier?
A. Vermillion Point.
Q. On Lake Superior?
A. Yes, sir.
Q. What is your business?
A. Life-saving service.
Q. Life-saving service?
111 A. Yes, sir.
Q. Stationed at Vermillion Point?
A. Yes, sir.
Q. You are one of the parties to this suit?
A. Yes, sir.
Q. One of the heirs of Edward Bernier?
A. Yes, sir.
Q. What is your age?
A. Thirty-four on the 19th of May.
Q. Do you remember making the proofs on this homestead property?
A. Yes; I remember something about it, but do not know that I remember the whole thing.
Q. Do you remember when your father died?
A. Yes, sir.
Q. When did he die?

A. The 19th of June, 1876.
Q. When did your mother die?
A. On the 5th of April, 1872.
Q. Your father did not marry again?
A. No, sir.
Q. Now, did you go to Marquette at the time these proofs were filed?
A. Yes, sir.
Q. Did you file them there yourself?
A. Yes, sir.
Q. Did you take the money there and pay it yourself?
A. Yes, sir.
Q. From whom did you get the money?
A. Some of it from Louis, some from Calixte, and the rest was furnished by Mr. Brown.
112 Q. This was in 1876, was it not?
A. I believe it was.
Q. How long after your father died?
A. A month or two.
Q. After your father died?
A. Yes, sir.
Q. Did you get a receipt for the money?
A. Yes, sir.
Q. Did you ever receive the certificate?
A. I do not remember of ever receiving it, sir.
Q. For whom did you make the commutation?
A. For all the heirs; it was to come endorsed to me.
Q. To you for them?
A. For them; yes, sir.
Q. Now, where were you living at the time you made this proof?
A. Right here in Sault Ste. Marie.
Q. Were the heirs occupying the homestead?
A. Yes; we were working it; I was working there myself.
Q. How long did you work there?
A. I cannot tell.
Q. How long did you stay there after your father died, at home?
A. I stopped there until some time in the fall of the year.
Q. Fall of the year?
A. Yes; then I went away to work and came back in the winter.
Q. Did you work on the place in 1877?
A. I did in the spring.
113 Q. Where did you go then?
A. From there I went off on a tug.
Q. As one of the crew?
A. Yes, sir.
Q. Did you receive the patent?
A. No, sir; never saw the patent yet.
Q. You have never seen the original patent?
A. No, sir.
Q. Did you ever get any notice from the land office at Marquette

or from Washington that there was any contest in the commutation?

Objected to as incompetent, immaterial, and irrelevant as to whether the witness ever had any notice.

A. No, sir; I never did.

Q. When did you first learn that the patent had been issued to the minor heirs of your father instead of to all the heirs, as you supposed it should?

A. It was in 1875, in February.

Q. '75 or '85?

A. '85, I mean.

Q. Where?

A. At Whitefish Point.

Q. Was it '85 or '86?

A. It was the fall of '85 or '86; I do not remember; it was two years ago; that would be '86.

Q. Was it before or after the time your brother made the transfer?

A. It was after.

Q. Who told you of it?

A. Ed.

Q. Where?

A. At Whitefish Point.

114 Q. At your house?

A. No, sir; at Endress & Co.'s warehouse.

Q. What was said?

A. He was telling me of it, that Fred. had sold and that the patent was made out in the minor heirs' name, and I argued with him and told him that it was not a fact; that I knew it was for the heirs of Edward Bernier, deceased.

Q. What did he say?

A. He said he knew better, he had seen the patent, but he said it did not make any difference, as the homestead would be all divided equally, the same as the rest of the property.

Q. Now, did you ever have any talk with the rest of the heirs before you had any trouble about the patent about dividing up the estate jointly?

A. Nothing more than talk between ourselves. That was, that after awhile, when the youngest would come of age, we would divide all the estate.

Q. Was there anything said especially about the homestead land?

A. Nothing said of it until two years ago.

Q. Was that the first time any claim had been made to you that the homestead had been made to the minors?

A. Yes, sir.

Q. Did you ever have any talk with the other minor heirs about that?

A. I talked with Matilda Endress.

Q. That is the younger of your sisters?

A. Yes, sir.

Q. When?

115 A. At the same time I was talking with Ed. at her house.

Q. At the same visit?

A. Yes, sir.

Q. What was the conversation?

A. The conversation was about the patent being issued in the name of the minor heirs.

Q. How did the conversation arise between you?

A. She said Ed. had told her of it. He had been there about a week or so; he was working there at the time.

Q. Did she say whether or not that was the first she had heard of it?

A. Yes; she said it was the first she had ever heard anything about it, but stated it was immaterial, as the homestead would be divided the same as the rest of the property, equally.

Q. She said that at that time?

A. Yes, sir.

Q. What did Edward say to you as to how he learned of the patent running to the minor heirs instead of to all the heirs?

A. At the time that Alfred sold to Mr. Goff.

Q. At the time that Alfred sold to Mr. Goff?

A. Yes, sir.

Q. Who did he say told him of it?

A. I do not remember that he said anything in particular; I think he was at the sale with Fred.

Q. It was during that transaction he learned of it?

A. Yes, sir.

116 Q. You were present and saw this agreement between some of the heirs and George about his going into possession of the estate?

A. Yes, sir.

Q. Do you remember when George moved down onto the homestead?

A. No; I don't think I do. I think it was the spring of the year some time, but I could not tell you what time it was.

Q. Now, during what period, from the time you made this proof, from the time your father died, up to the time Ed. told you that the patent ran to the minor heirs of your father instead of all of the heirs, was this homestead property treated any differently from the rest of the property of the estate?

A. No, sir; it was not.

Q. Was it ever spoken of as being anything different from the other property?

A. I never heard there was any kick about it until last winter.

Q. Last winter?

A. Yes, sir.

Q. Where did you go after you stopped working on the farm?

A. The life-saving station.

Q. You went sailing for awhile?

A. No, sir.

Q. What year did you go to the life-saving station?

A. In 1879.

Q. You went there after this agreement with George?

A. Yes, sir.

117 Q. Up to that time did you live off and on at home here?

A. Yes, sir.

Q. Where; on the homestead?

A. Yes; whenever I was here.

Q. What work would you do?

A. We cleared up quite a lot of land, fixed up the fences, and helped George build a kitchen and fix up the house; and then general things.

Q. How much did you clear up?

A. I don't know as I could tell you how much, but probably—we worked it at different times when we had nothing else to do.

Q. Have you any idea how many acres were cleared in that way?

A. I have not; probably two or three acres.

Q. Who paid your expenses up there?

A. Paid them myself, sir.

Q. Ever get the money back?

A. No, sir.

Q. Now, was any money paid for this commutation, to your knowledge, by any other person than yourself into the office up there?

A. Not that I know of.

Q. Did you ever hear of any being paid by the minor heirs?

A. No, sir.

Q. Did they ever repay to you or to any person, to your knowledge, the $156.00 that you paid in up there?

A. No, sir; there never was a cent returned.

118 Q. Did you make any deeds of any portion of this property to any person?

A. I deeded last spring, sir.

Q. Did you make any deed to Mr. Brown of any portion of the property covered by the patent?

A. Yes, sir.

Q. Do you remember when?

A. I do not remember the exact date.

Q. It was before you went to the life-saving station?

A. Afterwards.

Q. About 1883?

A. I think so.

Q. Where did you sign the deeds?

A. At Whitefish Point.

Q. Do you remember what sort of a deed you gave?

A. It was a warranty deed, acknowledging the transferring to him of what my father had agreed upon. It was transferred to Mrs. Brown.

Q. Do you remember what land you conveyed?

A. I could not tell you that.

Q. Do you remember that?

A. No, sir.

Q. Was it a deed signed with some of your brothers?
A. It was a deed alone.
Q. Do you know anything about your brothers' deeding?
A. Yes; they told me.
Q. What you know is simply what they told you?
A. That is all, sir.

Q. Now, from the very beginning, Mr. Bernier, to the end
119 of this matter, until you were told by Edward, did you have any knowledge of any claim being made by the minor heirs to the exclusive ownership of this homestead?
A. No, sir; never.
Q. You had nothing to do with the management of the estate as administrator or guardian or anything of that kind?
A. No, sir.

Cross-examination:

Q. What were you paid by Helen Brown for the conveyance made to her?
A. I do not remember.
Q. You said you gave a deed at Whitefish Point; what was paid for that?
A. There was not anything paid for that.
Q. Nothing?
A. No, sir.
Q. Received no consideration for it?
A. No, sir.
Q. Either in money or property?
A. No, sir.
Q. When you went to Marquette with this $156 that had been contributed by three parties, the minors knew nothing about it, did they?
A. Yes; they knew all about it.
Q. Did they know you were going to Marquette?
A. Yes, sir.
Q. What you were going for?
A. Yes, sir.

Q. All the minors knew it?
120 A. Yes; they were all there in the house when the things was talked over.
Q. Who arranged that you should go up?
A. The whole of us; it was arranged between us.
Q. The whole ten of you?
A. Yes; the whole ten were right in the house when it was arranged.
Q. Was there any talk about who the land should belong to when it was proven up?
A. It was to belong to all the heirs.
Q. Was there any talk about your taking the certificate in trust for all the heirs?
A. Yes, sir.

Q. That was talked before you went?
A. Yes, sir.
Q. How long altogether did you work on the homestead?
A. I could not tell you, sir. I worked before and after father died.
Q. How long after he died?
A. I could not tell you.
Q. How many seasons?
A. No seasons. I worked at odd spells.
Q. You helped George?
A. Yes, sir.
Q. When you worked there did you make it your home?
A. Yes, sir; always had my home there until I got married and went away.
Q. Took your board there and lived there as a member of the family?
A. Yes, sir.
121 Q. Did you receive any produce from the place or pay from George?
A. No, sir.
Q. Had nothing except your board and shelter?
A. My board and shelter; yes, sir.
Q. Do you remember the exact amount you paid at the land office in Marquette?
A. I could not tell you.
Q. Could you tell within five dollars?
A. It was somewhere near $190; probably more or less.
Q. I understand you received about $156 from the different ones?
A. No, sir; I did not say how much I had received.
Q. You received $100 from Mrs. Brown?
A. I don't know how much.
Q. You received some from Calixte?
A. Yes, sir.
Q. How much?
A. I don't know.
Q. How much from Louis?
A. I don't know.
Q. Do you remember how long it was after you went to Marquette before you heard that the patent was issued?
A. I did not hear it was issued until two years ago.
Q. Did you go to Marquette more than once?
A. Yes; a good many times.
Q. On account of this?
A. No, sir; only once.
122 Q. Did you sign some papers before George W. Brown and send them up there?
A. Yes; I signed an affidavit; me and L. P. Trempe; only that.
Q. How long after you went to Marquette was that made, to the best of your recollection?
A. I do not recollect.
Q. What season of the year was it when you went to Marquette?

A. It was along towards the fall of the year; I think in August.
Q. What year?
A. 1876.
Q. When did you make this affidavit, the same year?
A. I believe the same year; I would not be certain.
Q. Did you make it that fall or later?
A. I think it was.
Q. You think it was that fall?
A. I think so.
Q. Did you make and send up more than one affidavit yourself?
A. No, sir.
Q. How did you come to make that affidavit after you had been up there and send it up—what was the occasion?
A. To give the names of the heirs, the minor heirs, and their ages.
Q. Did not the land officers know at that time who the heirs were?
A. I presume they did, because they had the names there once before.
123 Q. Are you sure that in this list they had there were no names except the minor heirs?
A. The names of all the heirs were there, if I remember right.

Witness is shown an affidavit and is asked to look it over and see if it is the substance of the affidavit made before Brown and sent to Marquette.

A. I presume so, if it is a copy.

NOTE.—It is an affidavit bearing date February 27, 1877, found in "Plaintiffs' Ex. A."

Q. That is the substance of your affidavit made at that time, as far as you recollect?
A. I do not remember much about it, but I thought the names of all the heirs were on it.
Q. Was there any other reason for making this second affidavit than that the land office wanted to know the names of the heirs, the minor heirs, and the ages of the minor heirs?
A. They wanted the names of all the heirs.
Q. Did you not testify that they wanted the names of the minor heirs?
A. Yes; altogether, the names of the minor heirs and heirs-at-law.
Q. When you learned that the land office wanted the names of the heirs did you furnish the ages of any except the minor heirs?
A. I think the ages of all were furnished.
Q. At the time of making this second affidavit?
A. Yes; if I recollect right. Of course, I would not be positive, but——
Q. Did you send any affidavit except your own the second time?

124 A. Yes; I believe there was Mr. Trempe's.

Q. Whose else?

A. That was all, I think.

Q. Do you remember whether Mr. Carleton's affidavit was sent?

A. I do not recollect.

Q. How did you get the information that the land office wanted further affidavits on these points?

A. Through Mr. Brown.

Q. He was acting for you and the rest of the heirs?

A. Yes; he was acting for the heirs.

Q. And he told you that these affidavits would be needed?

A. Yes, sir.

Q. The affidavit you sent the second time, you mean?

A. Yes, sir.

Q. What did Mr. Brown tell you as a matter of fact; what was his language?

A. I do not recollect.

Q. Do you recollect where you met him the day of the conversation?

A. I do not recollect where it was; whether it was in his office or where it was, I do not remember.

Q. Did he tell you that he had gotten a communication from the land office?

A. Yes; something like that.

Q. Requiring these further proofs?

A. Yes, sir.

Q. You say you did not know that this patent was issued to the minor heirs until about a year ago?

A. No, sir; I said two years ago.

125 Q. Do you know whether any of the heirs knew how that patent read until a couple of years ago?

A. No, sir.

Q. Your idea is that nobody knew until a couple of years ago?

A. It is my idea, sir, that nobody knew until Mr. Goff had bought of Fred., and he soon worked it out.

Q. That was about two years ago?

A. I believe so.

Q. Do you know where the patent was kept after it was received here?

A. I do not know. I presume it was with the rest of the family papers.

Q. Do you know specifically about that paper, where it has been or who had it?

A. No, sir.

Q. When did you learn there was a patent issued?

A. I learned that two years ago. I did not know there was a patent out before.

Q. Then you never knew there had been a patent out until that time, nor where it had been?

A. No, sir.

Q. Did any person tell you what they wanted this additional proof for?

A. No, sir.

Q. What notice, if any, did you ever receive from the land office at Washington, Marquette, or any other place that the certificate which was issued to you on the payment of $156 was cancelled?

A. I never heard anything about it.

126 Objected to as incompetent, irrelevant, and immaterial.

Q. Did you get any papers from the office at Marquette?

A. I think I got a receipt for the money I paid.

Q. Do you know what form that was in?

A. It was simply received from Samuel F. Bernier the sum I paid for the homestead entry so and so, for the estate of Edward Bernier, deceased, or something similar to that.

Q. Do you know whether it was in the form of a certificate or in the form of a receipt?

A. I do not know. It was partly printed.

Q. Will you just look at this paper (showing the witness the first paper on the exhibit, purporting to be a certificate) and say whether it was a paper similar to that?

A. Yes, sir.

Q. Do you know where that is?

A. Probably George has got it among other papers.

Q. Whatever it was you brought, you gave it to them?

A. Yes, sir.

Q. And you think it was one like the first one here?

A. Yes; or very similar to it.

Q. Do you know anything about your father's pre-empting down there before he homesteaded?

A. Yes, sir.

Q. Do you know how long he had been in occupation of the place?

127 A. That I could not tell to the date, but I think he was there somewhere near a year and worked.

Q. Before he homesteaded?

A. Yes; I think. I would not be positive, but he has been working it ever since I remember.

Q. Ever since you remember. Did he live on it for about a year, you think?

A. Yes, sir.

Q. Do you know anything about his payment of pre-emption money?

A. I don't know much about it. I know that he paid some money and got some money.

Q. Do you know to whom he paid it?

A. I could not tell. I know he paid some at Marquette once.

Q. Ever see the receipt?

A. No.

Q. Do you know how much he paid?

A. I heard him talk about it.

Q. How much?
A. I do not remember, but something over $50, I guess.

Cross-examination:

Q. When did that take place, this pre-emption by your father when he paid the money?
A. That was just about a year before he died or just about that time, or probably it was two or three years; I don't know now. He paid it at the land office; paid something over $50.
Q. When was this?
A. I think a year or two before he died.
128 Q. Was it on the pre-emption?
A. I don't understand about the pre-emption. It was something about the homestead.
Q. Do you know personally about his having paid $50?
A. Yes, sir.
Q. As a pre-emption?
A. Pre-emption or something else; I don't know.
Q. Do you know whether it was for pre-emption or homestead?
A. I don't know whether it was for pre-emption or homestead.
Q. Do you know what land it was?
A. I do not know any further than that it was the homestead.
Q. Do you recollect back any further than 1854?
A. No, sir; I was just born that year.
Q. Witness is shown a receipt in print and writing, dated at the receiver's office, in Marquette, October 23, 1876, and is asked: How many papers did you receive from the land office at Marquette at the time you paid that money?
A. I received none, except the receipt for the money.
Q. Examine that paper and see if it is anything like the paper you received when you paid the money. The paper you received, was it like that? Read it over.
A. It might have been similar to this, but I know it was not that man Wilkinson. I paid the money to Campbell.
Q. Do you know who signed the paper?
129 A. I do not know, but Mr. Wilkinson was there at another desk.

Paper shown witness is numbered "Def. Ex. 6." It is a paper in print and writing. Ex. 6 is offered in evidence for the purpose of identifying the paper above spoken of. Received in evidence without objection.

Mrs. MARY ENDRESS sworn:

Q. Do you reside here, Mrs. Endress?
A. Yes; at present.
Q. You are one of the heirs of Edward Bernier, deceased?
A. Yes, sir.
Q. What is your age?
A. Thirty-two next June.

Q. You were under twenty-one years at the time of your father's death?
A. I was just twenty.
Q. You know this property in controversy?
A. Yes, sir.
Q. You lived there some time after your father died?
A. Yes; I lived there one summer.
Q. When were you married?
A. In the fall of 1879.
Q. Living on the farm at that time with George?
A. Yes, sir.
Q. You were then over twenty-one?
A. Yes; I was twenty-three.
Q. You signed the agreement with George to go onto the property—the agreement with all?
130 A. There is no doubt I did, although I do not just recollect it.
Q. You heard about the one turning the property from Louis to George?
A. Yes; I understood that perfectly.
Q. When did you first learn, Mrs. Endress, that the patent to this land was issued in the name of the minor heirs?
A. I think it was last winter. I do not think I ever heard of it before.
Q. In what way was this homestead property treated—the same as the other property belonging to the estate?
A. Yes, sir.

Objected to as incompetent, irrelevant, and immaterial as to how the property was treated.

Q. You represent your brother Joseph's interest in this matter, do you?
A. Yes, sir.
Q. Have a deed from him?
A. Yes, sir.
Q. You have not made any defense in this case?
A. No, sir.
Q. Who informed you, if you can recollect, about the patent having been issued in the name of the minor heirs?
A. My brother Ed. wrote and, I think, Cal. did, too.
Q. Where were you living?
A. In Two Rivers, Wisconsin.
Q. When did you come back again to the Sault?
A. On the 20th day of June.
Q. Last year?
131 A. Yes, sir.
Q. And it was some time before that you heard of it?
A. Yes; I think it was in March or February of last year.
Q. I suppose you know very little about the matters of the estate from the time you got married up to the time you returned here?
A. Yes; I resided here about two years after I was married.

Q. Here in the village?
A. Yes, sir.
Q. Do you know about the children or anybody living down there on the property?
A. Yes, sir; the minor children were all there while I was there.
Q. The rest were all working for themselves?
A. Yes, sir.
Q. Do you know how long Edward stayed there?
A. I could not tell; he was away the summer I was there and returned in the fall, and, I think, stayed that winter; but further than that I could not tell.
Q. You could not tell?
A. No, sir.
Q. Do you remember about Samuel going up to prove about the homestead patent for the land?
A. Yes, sir.
Q. Dou you know where he got the money?
A. I know there was some got from Mrs. Brown, some from Calixte, and some from Louis, but the amounts I do not know.
Q. Did you ever pay any of it?
132 A. No, sir.
Q. Do you know of any of the other minor heirs paying any of it?
A. Not to my knowledge.
Q. Do you know of any of them ever paying any taxes?
A. No, sir.
Q. Did you ever pay any?
A. No, sir; I did not.

Cross-examination:

Q. You say that you made no defense?
A. No, sir.
Q. And that you represent your own interest and Joseph's?
A. Yes, sir.
Q. Did you sell the right of way to the water-power canal?
A. Yes, sir.
Q. What did you receive for that?
A. $2,000.
Q. In cash?
A. Yes, sir.
Q. You went down with George when he took possession in 1879?
A. Yes, sir.
Q. And stayed there until the fall of '79?
A. Yes, sir.
Q. During the time you were there the children were all there?
133 A. Yes; except Fred. I don't think he was there that summer; I think he was there in the spring, but went out

and worked somewhere in the summer, and Ed. also, but they were there in the spring, all of them.

Q. Do you know what opportunities the children had for education when they were there?

A. They were at liberty to go to school.

Q. Do you know whether they did go to school?

A. The youngest did.

Q. Ever hear anything about their having trouble about getting books to go to school with?

A. Not to my knowledge while I was there.

Q. You were here at the time the homestead proof was made?

A. Yes, sir.

Q. Did you know when it was actually issued?

A. I rememember when it was brought to the house. My brother spoke about the patent of the homestead, but do not remember ever handling the paper at all.

Q. After that circumstance of its coming to the house did you ever see it again?

A. I do not remember whether I ever did or not, but I know for a fact that it was put away in the house.

Q. And after about two years after you were married you went to Wisconsin to live?

A. No, sir; I went to Wisconsin four years ago this coming spring. We resided here for two years and then went to Whitefish Point and then to Wisconsin.

Q. During these years did you ever have occasion to look at the patent?

A. No, sir.

Q. Who brought it to the house?

134 A. I do not remember, but I think it was Louis.

Q. You say you think it was Louis?

A. Yes; but I am not positive.

Q. Do you know where it was kept in the house; who had charge of it?

A. Well, there was a small chest where all the papers were kept and it was there.

Q. Left there undisturbed; no attention given to it by anybody?

A. No, sir; not to my knowledge. I do not think it was ever taken out of there while I was there.

Q. Did you ever again hear anything about this patent until you heard the minor heirs were making a claim under it about a year ago?

A. No, sir.

Q. During that time you did not hear it talked about by anybody?

A. No, sir.

Q. About the time you signed the contract, when the matters were turned over to George, the impression prevailed, did it not, that you were of age at the time your father died, at that time when you signed that contract?

A. If I now remember right, Mr. Robbins brought me a paper and said I was so near of age it did not make any difference.

Q. Was it at the time of the guardianship?

A. Yes, sir.

Q. You were the only one of the minor children who signed this agreement, were you not?

A. I could not tell you that?

Q. Do you know what other parties signed it?

135 A. No, sir.

Q. You made the sale to the water-power company after you came back from Wisconsin?

A. No, sir.

Q. After you learned about the controversy in regard to the patent?

A. Yes, sir.

Q. You knew the minor heirs were claiming to hold under this patent at the time you made this sale?

A. Yes, sir.

Q. And how long was the water-power canal negotiating with you to get your two-fifths?

A. They were to begin work in two years.

Q. But how long were they bargaining before the deal was closed? Did they correspond with you in regard to it?

A. I think not at all.

Q. Where was the purchase made?

A. In Wisconsin.

Q. Was there an agent sent out there?

A. My brother came out and afterward Mr. Oren came.

Q. Had you any communication with the water-power folks until Fred. and Mr. Oren came?

A. No, sir.

Q. And was the matter closed up while Mr. Oren was there?

A. Yes, sir.

Q. How long was Mr. Oren there?

A. Two days or a day and a half.

Q. You gave him to understand that you owned two-fifths?

136 A. I did not tell him whether it was two-fifths or two-tenths.

Q. You gave him to understand that you controlled Joseph's interest and your own?

A. Yes; I did that. I gave him all the right I had.

Q. You got considerable more than any of the others?

A. I don't know anything about that.

Q. Don't know what they got?

A. No, sir.

Q. How long before that sale had you known of the fact that the patent ran to the minor children?

A. I heard it some time in the winter, and I think it was in April when Mr. Oren came there.

Redirect examination:

Q. The deed you gave the water-power company was a quit-claim?

A. Yes, sir.

Q. State whether or not you have not always expressed your readiness to make a proper division with your brothers of the property.

A. Yes; I expected that would go the same as the rest—that it was to be equally divided. I never thought anything else.

Q. You say you informed Mr. Oren that there was a controversy between the older and younger heirs?

A. Yes, sir; and Mr. Oren knew it a great deal better than I.

Q. He represented the water-power company?

A. Yes, sir.

137 Recross-examination:

Q. You say you have always been ready to divide this property with the other heirs same as if they had been minors?

A. I always understood that it was to be so, and when I heard that the patent was made that way I did not think it was lawful.

Q. Have you always been willing to make a division since you learned that fact?

A. Yes, sir.

Q. Have you ever inquired of the older children whether they ever received anything for their interest in this property—that is, from the older children; did you ever learn from them what they had received for their interest?

A. No; I do not think they made any sales of any kind.

Q. Did you ever offer to divide any part of the $2,000?

A. No, sir; I did not.

GEORGE BERNIER recalled.

Cross-examination:

Q. After matters were turned over to you by Louis and up to recent times, you regarded yourself as general manager of the estate?

A. Yes, sir.

Q. As being a sort of administrator in the place of Louis?

A. Yes, sir.

138 Q. And in that capacity you undertook to pay taxes and take care of matters generally?

A. Well, my contract calls for me to pay all taxes, aad I have done just as my agreement calls for.

Q. You regarded that as a part of your duty?

A. Yes, sir.

Q. To pay taxes among other things; and did you pay the taxes every year on this property?

A. Every year except last year, because it was not assessed to the estate of Edward Bernier.

Q. Did you allow the property at any time to be sold for taxes?
A. Yes; and bought it back in the name of the estate.
Q. You obtained deeds from the auditor general?
A. Yes, sir.
Q. Tax deeds?
A. Yes, sir.
Q. Did they run in the name of the estate?
A. Yes, sir.
Q. Is there an island belonging to the estate?
A. Yes, sir.
Q. Did you allow that to be sold for taxes?
A. Yes, sir; all the land belonging to the estate; let it all go for taxes, the whole of it.
Q. It all went for taxes?
A. Yes, sir.
Q. And had to be redeemed?
A. Yes, sir.
Q. What year was that?
A. I don't know exactly what year it was.
Q. How many years ago?
139 A. I don't know; I got the tax title back here about two or three years ago.
Q. Were all the tax titles that were bought in from the auditor general in the name of the estate? Did Sutton have some land in Sugard island belonging to the estate?
A. That was before I took it. I did not know anything about that until Sutton came and told me.
Q. What was done about that?
A. It was redeemed, I think. I don't know much about it. I think it was redeemed last winter from Sutton. I know I was assessed to pay my interest on it.
Q. Who owns that title now?
A. I don't know. I have not seen it. I know last winter they made me pay so much for the deed. I don't know what it was.
Q. When you were on the homestead did the children ever make complaint to you that they could not get books to go to school with?
A. No, sir.
Q. Do you remember finding a notice on your door one day from one of your brothers wanting you to come uptown, wanting to see you about the way you were treating Joe?
A. Yes; that was the time I wanted Joe to go to school, and told him I would send him to jail if he did not go.
Q. You remember the circumstances?
A. I remember there was something nailed on the door, but do not remember what it was.
Q. Did you go uptown and see about it?
A. I did go up the next day.
140 Q. Had Joe been locked out of the house the night before?
A. No, sir; not that I know of. I don't know; I could not say. I know he came in and wanted to see Mrs. Endress and

Mrs. Endress sent him back to me, and I told him if he did not go to school he would have to go to jail.

Q. What time of the year? Snow on the ground?

A. No, sir; I was uptown with a wagon, I know.

Q. The brothers complained at that time that you had locked Joe out of doors and that he had to sleep in the barn?

A. I do not remember.

Q. You would not swear that they did not make such a charge?

A. No; I would not swear that they did not or did, because I do not remember much about it, and I know he wanted to be out all hours of the night and drink whiskey, and I would not allow him. I know that much.

Q. Vacation he worked around the farm?

A. He did choring around.

Q. He was rather a delicate boy?

A. Yes; that is why I wanted him to go to school and not to do the work.

Q. You did not make any exertions to put the others to school?

A. The others did not want to go to school; did not stop there long enough.

Q. You did not threaten the others to go to jail if they did not go to school?

141 A. No, sir; I told them to go to school, but they did not want to.

Q. Did not one of the girls leave there because she was not better clothed and was not provided for?

A. That is the first I ever heard about it.

Q. You say the taxes were unpaid on the whole estate for one year?

A. Yes, sir.

Q. What year?

A. I don't know.

Q. It had accrued after you went there?

A. Yes, sir.

Q. Why did you let it go?

A. I let it go, calculating to buy it of the county treasurer.

Q. Did you think it would be paid cheaper to the county treasurer than at that time?

A. No; I did not have to pay our taxes, except when I felt like it, either to the county treasurer or bid it in, or what I liked.

Q. You expected to use the money of the estate in buying the tax deeds?

A. No, sir; I expected to use my own money.

Q. You were receiving rents and profits from the estate at that time?

A. Receiving a little of it.

Q. Receiving rent from the house here in town?

A. Sometimes I did, and sometimes I did not.

Q. Did you not get as high as $20 a month for one piece of property here?

A. No, sir; I never got as high as $20.

142 Q. You expected to charge the estate with whatever taxes you paid out on this property?

A. No, sir.

Q. Proposed to pay it out of your own personal funds?

A. I proposed to take the property and use it and pay the taxes.

Q. You did not expect to make any charge for taxes?

A. No, sir; and did not expect to give any account of the rent or to give any account of what taxes I paid.

Q. If you had any more rents and profits than you paid out, what would you do with it?

A. I was supposed to take care of it.

Q. For whom?

A. For my own use.

Q. For your own use?

A. Why, certainly.

Q. Did you think it was more prudent to let the taxes go until a percentage was added onto it?

A. No, sir; that was my own business.

Q. Why did you not pay it?

A. Because I didn't feel like it.

Q. Why didn't you pay the taxes to the county treasurer instead of letting it go to sale?

A. Because I could get it a few cents cheaper; no interest to pay, only the advertisement.

Q. Then your object in letting it go to sale and not paying into the county treasury was to save interest?

A. Yes, to save a dollar or so.

143 Q. That was the object?

A. Why, certainly; I bid it in for the estate so that it would not make any difference.

Q. Why did you not save money by paying it to the county treasurer?

A. Because I did not want to.

Q. You did not have a saving mood then?

A. When I got ready I paid it.

Q. This sale was in October, 1885?

A. I think it was. I know I got a deed back a couple of years ago, and I calculate this deed would be the same as a tax receipt.

Q. This sale in 1885 was after you knew the patent ran to the minor heirs?

A. I don't know.

Q. You know when Fred. sold to Mr. Goff?

A. Yes, sir.

Q. When was that?

A. In November, 1885, I think; but that was in October I bought it.

Q. You knew about how the patent was at the time of these taxes?

A. No, sir.

Q. You swear you did not know anything about it at the time?

A. No, sir; if I did know I do not remember.

Q. Whose money did you use when you bought up the tax sale?
A. My own money.
Q. Use any money of the estate?
A. No; I think I paid it with a highway order or a
144 poor order—I had some kind of orders—and made some exchange with the county treasurer.
Q. Paid your own funds?
A. Yes, sir.
Q. Why did you not take the deed in your own name?
A. Because I did not own but one-tenth interest and did not want the deeds in my own name. I bought it just the same as it was assessed on the roll.
Q. Did any of the other brothers contribute any part of the money that was paid for the tax deeds?
A. Not that I know of.
Q. They knew of it, did they?
A. I don't know whether they did or not. I may have told some of them.
Q. And at the time you made this purchase you were still in general charge, supposing you were administrator in the place of Louis?
A. Yes; and I hung onto the deeds and tax receipts.
Q. Under this agreement that was entered into, when matters were turned over to you by Louis, you had a list of property you testified to?
A. Yes, sir.
Q. Some stock and some farming implements?
A. Yes; a few old things.
Q. Was there a note and mortgage from Lambert turned over to you by Louis?
A. Yes, sir.
Q. And a note from Calixte?
A. Yes, sir.
145 Q. What has become of the Lambert mortgage and note?
A. I will give an account of all that when I settle with the minor heirs. That is what I want now.
Q. You can give an account of it when you settle. Where is that Lambert —?
A. I was all paid up.
Q. Paid to you?
A. Yes, sir.
Q. Did you discharge the mortgage?
A. Yes, sir.
Q. As administrator?
A. Yes; they told me I was the only one that had any right.
Q. Did you go to the register of deeds' office and discharge it.
A. Yes, sir.
Q. How long ago was that Lambert note paid to you?
A. I do not remember.
Q. About how long?
A. Three or four years, I think.

Q. Was it all paid in one sum?
A. No, sir.
Q. In different installments?
A. Yes, sir.
Q. How many installments?
A. Three, I think.
Q. What was the amount of the first?
A. I do not remember.
Q. The second?
A. I do not remember.
146 Q. The third one?
A. I do not remember what any of these notes was.
Q. When was the first payment made to you by Lambert?
A. I do not remember.
Q. Three or four years ago?
A. I do not remember.
Q. You would swear it was not five years ago.
A. I would not swear, because I do not remember.
Q. These three payments were in cash?
A. Yes, sir.
Q. What did you do with the money?
A. The boys got some of it and I have their note for it.
Q. You paid it around?
A. Yes; and got papers to show for it.
Q. What ones received some?
A. William, Louis, Matilda, and Mary. I think they each got some of it.
Q. How much did you pay William?
A. I do not know. Ed. got some, too. I gave him an order on Lambert for some money one time.
Q. Did you take a note from William?
A. Yes, sir.
Q. Got that note?
A. Got it at home.
Q. How long ago did you make the payments to William?
A. I do not remember.
Q. Paid back any part of it?
A. No, sir.
Q. Any interest?
147 A. No, sir.
Q. How much did you pay to Matilda?
A. I don't know.
Q. Take any note for it?
A. No, sir; it was charged up to her. She was going to pay the following week, but she has not returned it yet.
Q. Has Matilda paid back any part of it?
A. No, sir.
Q. Or any interest?
A. No, sir.
Q. How much did you pay to Ed.?

A. I don't know; I gave him an order on Lambert, but how much I don't know.
Q. What amount to Samuel?
A. I don't know what it was.
Q. You could not approximate this amount?
A. No, sir; nor any of the amounts.
Q. Did Calixte have any?
A. No; not from me; I don't think he did.
Q. Did Mary?
A. Yes, sir.
Q. How much; take any note?
A. No, sir.
Q. Any memorandum of the amount?
A. I have at home.
Q. Pay back any of it?
A. No, sir.
Q. Any interest?
A. No, sir; I never intended to ask for it until the settlement.
148 Q. How much was left in your hands after you paid out these several amounts?
A. I don't know until I go back and look at my books.
Q. When this Lambert note was paid was the interest on the money collected at the same time?
A. I believe so.
Q. Then you received something over $800 and accumulated interest?
A. I don't know.
Q. Could you state within a couple of hundred dollars?
A. No, sir; it is too long ago; I don't remember anything about it.
Q. And up to this time you never was called to account by anybody?
A. No, sir.
Q. Never rendered any explanation or statement?
A. No, sir.
Q. Never tried to have any settlement thus far?
A. No, sir; nobody ever asked me; I have been waiting for a settlement.
Q. Ever expect to settle up?
A. I am ready to settle at any time they are.
Q. You would not be able now to turn over this $800 until you collect in those notes?
A. It don't make any difference; I am good for it.
Q. You would be ready to turn in the cash, would you?
A. Any time they want it.
Q. You would not know how much to turn over?
A. I could know very soon.
149 Q. You don't know how much you let these parties have?
A. I can by looking over my books.
Q. You don't know how much interest has accumulated?

A. No; but I can very soon figure it up.

Q. You don't know how much of this Lambert money there was in your hands that you did not pay out?

A. I can very soon tell after I go home.

Q. What has been done with that?

A. Perhaps I have used it and perhaps not.

Q. Have you got it now?

A. Probably in my bank.

Q. Did you pass the amount, after paying out these various amounts, into your private bank account?

A. Yes; certainly.

Q. At about the time you collected it from Lambert?

A. I guess the first couple of payments the boys got as soon as I got it.

Q. As soon as you received the balance you turned it over to your private bank?

A. There was no bank at that time.

Q. What did you do with it?

A. Let it lie at home.

Q. And afterwards you put it in your bank account?

A. Yes, sir.

Q. Lying there ever since.

A. Some of it.

150 Q. What was done with that which you did not put in the bank?

A. Likely I have used it. I used it when I needed it.

Q. Ever put any out at interest, except what you paid out to the boys?

A. No, sir; I calculated to be responsible for the interest myself.

Q. On what amount did you expect to pay interest?

A. On what amount I had left after the boys had theirs.

Q. Since what time?

A. Since the time the note is dated. My book will show the whole of it. There is a date to those books.

Q. You are willing to pay interest on that balance?

A. Why, certainly.

Q. Because you think it is your duty as administrator?

A. Yes; I want to do what is right.

Q. You regard it as trust money?

A. Why, that is all.

Q. Do you know whether any of these notes given to you by the boys and by your sisters are past due?

A. They are all past due.

Q. Never made any effort to collect them?

A. No; they claimed it was all right to keep it until we settled up and we could then settle all our papers. I thought them good.

Q. You say you took this tax deed in the name of the estate so all would have the benefit?

A. Yes, sir.

151 Q. You claim a tenth of that tax deed for yourself personally?

A. Yes, sir.

Q. You think it is not important whether these notes are collected in or not before you have your settlement?

A. Why, no.

Q. But you are ready to come forward with the cash?

A. Yes, sir.

Q. Have you any real estate in your own name?

A. Yes; I have some of it.

GEORGE W. BROWN recalled.

Direct examination:

Q. What was this property worth per acre on the 1st of July, 1887, at the time the bill was filed, according to the market here? What was the market price?

A. Well, I should think that that property ought to have been worth from three hundred to four hundred dollars an acre.

Q. At that time?

A. Yes; the way it was selling. I would not want to give it for that.

Q. But the way property was selling that would be about the price?

A. Yes, sir.

Q. What was it worth in the market here in 1885—the winter of 1885–'6?

A. $75 an acre and from that to $100.

152 Q. Then you would give this court to understand there was a sudden rise of values in 1887, at the beginning of the year?

A. Yes, sir.

Cross-examination:

Q. For what purpose was it worth $75 an acre in 1885–'6, for farming purposes?

A. No; it never amounted to much for farming purposes, none of it.

Q. For what purpose was it worth $75 an acre?

A. To speculate on; we expected there would be some fellows along here——

Q. Outside of any speculative prospect what was it worth in 1885–'6? I suppose that that was about what it was worth for farming purposes?

A. No, sir.

Q. What was it worth for farming purposes? I mean aside from speculative value, casting that out of the view.

A. Do you mean for farming purposes? Yes, sir; I do not think it was worth $5 an acre, unless it was perhaps fifteen or twenty acres.

Q. Would that twenty acres be any part of this seventy involved in this suit?

A. Yes, sir.

Q. The twenty acres is in the seventy involved in this suit?

A. Yes; and the rest of it is low, white sand, and I have tried to get crops off it, but could not get enough to pay the seed.

Q. This 20 acres was better land?

A. Yes, sir.

153 Q. What was that worth?

A. $8 to $10 or $20 an acre.

Q. How far does it lie from the court-house?

A. Two miles and a quarter or two and a half. I think about two and a quarter down Spruce, and just on the other side south.

Q. What section and what range is the court-house on?

A. I think it is in 6, but I am not certain.

Q. Is it 1 east?

A. Yes; 47 north, and I think it is in the northeast part of fractional section 6.

154 *Defense.*

EDWARD BERNIER sworn:

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. And you were a minor at the time of the death of your father?

A. Yes, sir.

Q. You remember the circumstance of the management of the estate being turned over to George by Louis?

A. Yes, sir.

Q. And of George taking the family and going down on the homestead?

A. Yes, sir.

Q. You are acquainted with the location of the property in question?

A. Yes, sir.

Q. There was a house there and George moved into it with the family?

A. Yes, sir.

Q. Was George married at that time?

A. Yes, sir.

Q. Married that same spring?

A. Yes, sir.

Q. Who constituted the family down there?

A. There was George and Sam. and I, Mary and Tilla and Joe.

Q. Fred. there?

A. No, sir.

Q. He was not?

A. No, sir.

155 Q. Where was Fred. making his home?

A. I belive in the woods, at a tie camp.

Q. Is he older or younger than you?

A. Younger.

Q. You went down as soon as George?

A. Yes, sir.

Q. And made your home there?
A. Yes, sir.
Q. What did you do for your living?
A. Worked out most of the time.
Q. Shift for yourself?
A. Yes; I left there in the spring of 1880.
Q. Who provided you with clothes?
A. I did myself.
Q. Where did you spend most of your time?
A. Working round mostly, except when I was with George.
Q. What amount of schooling did you have?
A. None.
Q. Was there anything said to you about going to school?
A. No, sir.
Q. State whether or not you were provided with books to go to school.
A. I had no books and did not go to school, either.
Q. How about Fred.; did he go to school?
A. Not to my knowledge.
Q. How about Mary?
A. No, sir.
Q. Did not Tilla have any schooling?
A. Not that I know of.
156 Q. They made their home with George—Matilda and Mary?
A. Yes, sir.
Q. What did they do?
A. Worked around the house when there.
Q. What did Joe do?
A. Worked around the same as the rest of us.
Q. State whether or not Joe had any schooling.
A. Not to my knowledge.
Q. Did you hear anything said at the time in regard to school books for the children?
A. No, sir.
Q. Hear the matter talked of at all?
A. No, sir; not at all.
Q. Do you know how Joe was treated there by George?
A. Not exactly; because I was not there after I left there.
Q. Do you know of your own knowledge in regard to his treatment at any time?
Yes; he came after me, and I went down with four or five of the boys and George was not at home.
Q. What took place?
A. We put a notice on the door and told him we wanted to see him.
Q. What followed?
A. He came up and we had a little jangle among ourselves.
Q. What about?
A. About him; the way he was treating Joe.
Q. In what way?

A. I don't know exactly, but I know Joe made a complaint
157 about sleeping out at nights and that George locked the door on him.

Q. What did George have to say about that?

A. I don't remember.

Q. Whether or not there was a considerable of a quarrel among the brothers and George about it.

A. There was.

Q. What time of the year was that?

A. In the winter some time.

Q. State whether or not you heard of other members of the family being compelled to sleep out of the house.

Objected to as incompetent and immaterial.

A. Yes, sir.

Q. How long did Fred. stay there with George?

A. I could not say; he did not stay there but very little.

Q. Did you know whether he stayed there after the first winter that George went down?

A. I think he stayed there a little while during the spring.

Q. Do you know how he came to leave?

A. I do not; they could not get along, I believe.

Q. Could not get along?

A. No.

Q. What did he go to do?

A. On a tug up to the life-saving station.

Q. How old was he at that time?

A. About 20.

Q. Continue after that to shift for himself?

A. Yes, sir.

158 Q. Do you know whether he ever made his home there since?

A. I do not.

Q. Besides George and your brothers and sisters, were there any other members of the family there?

A. No; there was nobody there regularly except his wife and his wife's brother.

Q. Do you know whether George's wife's brother made his home there?

A. Yes, sir.

Q. Was there when Fred. went away?

A. Yes, sir.

Q. Making his home there the winter this quarrel occurred?

A. I believe he was there.

Q. State whether or not you received money from George of the estate.

A. Yes; I got $10 from him.

Q. How did that come about?

A. Because I loaned it to him before.

Q. Any money been received by you?

A. No, sir.

Q. Did you ever ask for any settlement in regard to the matters of the estate?

A. We tried to get it in the fall of 1885; George kicked; he would not have anything to do with it; we got into Mr. Goff's office and he came there, but did not settle.

Q. Nothing was done?

A. No, sir.

Q. Have matters rested that way ever since?

A. Yes, sir.

159 Q. State whether or not you have had any words with George about the place down there since the question arose about the patent.

A. I don't know as we have had any words; have talked with him several times.

Q. What took place?

A. Nothing much; he told us one time in Mr. Goff's office he knew about it long before that.

Q. Knew of it long before that?

A. Yes, sir.

Q. Did you ever have any words with him in regard to the possession of the property?

A. Last spring I did.

Q. What occurred then?

A. I was down there to plant some oats. I had a team hired and he would not let me go onto the ground.

Q. What else took place there at that time?

A. I did not see him down there. His man was there next morning planting it.

Q. State whether or not he made a claim to the property.

A. Yes, sir.

Q. Do you know how he claimed it then?

A. I believe he claimed it all.

Q. Did he explain to you how he came to claim it all?

A. No.

Q. What rights did he claim to have there?

A. He did not say.

Q. You were proceeding to say something about a conversation abreast of the garrison.

160 A. I met him one day and he told me not to put my foot on there. He did not want me to go on there or I would get in trouble.

Q. Where?

A. The homestead.

Q. That is in litigation here now?

A. Yes, sir.

Q. Do you know anything about George claiming to have a tenant there?

A. Yes, sir.

Q. When was that?

A. He had one there right along.

Q. What, if anything, did he claim about it to you?

A. Nothing, only he had a tenant there.
Q. Did he say anything about what rent he was collecting?
A. No; I don't believe he said anything about the rent.
Q. Do you recollect when you first learned how this patent ran?
A. Yes, sir.
Q. When was that?
A. In 1885, when Mr. Goff was telling me about it.

Cross-examination:

Q. What time in 1885 was that?
A. Some time in December.
Q. In December?
A. The fore part of December.
Q. When did you become of age?
A. I came of age in '79, I think.
161 Q. What month?
A. In June.
Q. In June, '79.
A. I think it was.
Q. How long have you been working for yourself?
A. Pretty near all the time.
Q. Before your father died?
A. Before he died and afterwards—that is, I worked and took my earnings to the house.
Q. Mary was older than you?
A. Yes, sir.
Q. She came of age in 1877?
A. Yes, sir.
Q. What month?
A. In June.
Q. Fred. came of age when?
A. In 1881, I think.
Q. So that when Fred. left there he must have been about 21 years of age?
A. No.
Q. 20?
A. 19 or 20.
Q. How long had he worked for himself before he left there?
A. Pretty near all the time before that, and took his earnings to the house.
Q. The heirs all lived together?
A. Yes, sir.
Q. And they all lived together and understood that everything was in common?
A. Of course, it was all for keeping the house.
Q. You left in the spring of 1880?
162 A. Yes, sir.
Q. Did not go back there at all to live?
A. No, sir.
Q. This was after you were 21 years of age?

A. Yes, sir.
Q. You knew that George went onto the homestead under this contract that he made with the heirs?
A. No, sir.
Q. Did you know about that contract?
A. No, sir.
Q. Did you know it was turned over to George?
A. Yes; but did not know how.
Q. You knew that he went there and took the family with him?
A. Yes, sir.
Q. You knew that he made some improvements?
A. Yes, sir.
Q. You knew he built a fence?
A. Yes, and I worked at that myself.
Q. You went down there, you say, last spring?
A. Yes, sir.
Q. For the purpose of sowing some oats?
A. Yes, sir.
Q. You knew he was there in possession at that time?
A. Yes, sir.
Q. And your purpose was simply to interfere with his possession?
A. It was not, because I had a right there.
Q. It was to put George out and get there yourself?
A. That was the calculation.
Q. George told you he had the right to it?
163 A. Yes, sir.
Q. Did he not tell you he had a right under his contract with the heirs?
A. No, sir.
Q. Simply said he had a right to all the property of the estate?
A. Yes, sir.
Q. And you understood he claimed that as a part of the estate?
A. Yes; it was always supposed to be a part of the estate.
Q. Do you remember when Fred. deeded to Goff?
A. Yes, sir.
Q. Were you present?
A. No, sir.
Q. Had you talked with Goff before this about it?
A. No, sir; I do not think I talked with him until afterwards.
Q. Positive?
A. Pretty sure.
Q. Do you know whether Fred. had deeded or not?
A. I could not say.
Q. What is the fact? Do you know?
A. I do not know.
Q. Ever talk with Fred. about it?
A. Yes.
Q. Since then?
A. Yes, sir.
Q. When did he say he had found it out?
A. I don't know.

Q. The first you heard of it was from Mr. Goff?
A. Yes, sir.
164 Q. Did you expect George to send you to school after you were 21?
A. No, sir.
Q. Did you ever go to school of your own notion?
A. Yes, sir.
Q. Where?
A. At school here.
Q. How long?
A. Pretty near all one winter.
Q. When?
A. I could not say. It was at the time Mrs. McGinley was teaching.
Q. That was in 1877?
A. I could not say.
Q. While your father lived?
A. No, sir.
Q. After he died?
A. Yes, sir.
Q. So that you must have been about 20?
A. Pretty near that.
Q. Where were you living at that time?
A. Up here, at what is known as the blue house.
Q. With the rest of the family?
A. Yes, sir.
Q. Ever go to school before that?
A. Yes, sir.
Q. While your father was living?
A. Yes, sir.
Q. How much did Matilda go to school after your father died?
A. I don't know whether she went at all or not.
165 Q. From the time your father died, in 1876, until George took possession, in 1879, did she go to school?
A. I could not say.
Q. Where did they live?
A. All up here in the blue house.
Q. How was it with the other children during the period from the death of your father until George took possession, did they go to school?
A. I do not know.
Q. Do you mean you cannot remember?
A. I don't remember; that is about the size of it.

Redirect examination:

Q. Do you remember this blue house being rented by Louis while he was assuming to act as administrator?
A. No, sir.
Q. Do you remember of it being rented by George?
A. Yes, sir.

Q. For what purpose?
A. For a boarding-house.
Q. Do you remember what rent he received?
A. Different prices; sometimes ten, sometimes fifteen, sometimes twenty, and as high as twenty-five.
Q. Do you know whether it was kept rented?
A. It was; there was always somebody in it, to my knowledge.
Q. Did you ever receive any rents yourself?
A. No, sir.
Q. Do you know of any of the other minor heirs receiving any?
166 A. No, sir.
Q. Do you know how the minor children got their clothes; who provided them?
A. I could not say.
Q. How did you get your clothing?
A. I had to work for it.

MATILDA ENDRESS sworn:

Q. You are one of the defendants in this suit?
A. Yes, sir.
Q. Where do you reside?
A. Whitefish Point.
Q. Your father was Edward Bernier?
A. Yes, sir.
Q. When he died how old were you?
A. Fourteen years.
Q. Do you remember living in the blue house some time after he died?
A. Yes, sir.
Q. Do you remember going down on the homestead with George?
A. Yes, sir.
Q. About how old were you when you went on the homestead with George?
A. Seventeen.
Q. An- how long did you remain there?
A. Just until November.
Q. The same fall?
A. Same fall; yes, sir.
Q. You were still 17 when you left?
A. Yes, sir.
167 Q. Were you given any schooling after Louis and George took charge of matters?
A. No, sir.
Q. Do you know whether any of the minor children were?
A. Not unless it was Joe, for Freddie was not.
Q. Who provided your clothing after you went down on the homestead with George?
A. What little I had to have I got.
Q. State whether or not there was any furnished by George.

A. Very scant.
Q. State whether or not there was anything said about the minor children being put to school by George.
A. No, sir.
Q. Any talk about providing them with school books?
A. No, sir.
Q. Do you know how the minor children were treated down there by George?
A. Not any too good.
Q. How long after you lived there before you were married?
A. Not quite a year after; ten months after.
Q. During that year or ten months where did you reside?
A. I worked for my sister first and then for Mrs. Endress.
Q. That was Mary?
A. Yes, sir.
Q. Was she married at the time she left the homestead?
168 A. Yes, sir.
Q. What was the occasion of your leaving there?
A. Things were not suitable.
Q. State whether things were moving unpleasantly between you and the rest of the family.
A. Very unpleasantly.

Cross-examination:

Q. You were 17 when you went down to live with George?
A. Yes, sir.
Q. Still 17 when you left there?
A. Yes, sir.
Q. How old were you when you returned?
A. 18.
Q. You returned there when you were 18?
A. Yes; the next spring.
Q. Where had you lived in the meantime?
A. I had worked out for my sister and Mrs. Endress.
Q. Your sister, Mrs. Mary Endress?
A. Yes, sir.
Q. Where?
A. Whitefish Point.
Q. How long did you stay there?
A. From November until May.
Q. How long did you stay with Mrs. Endress?
A. From May until the middle of July,
Q. Then you returned to George's?
A. Yes, sir.
Q. When did you say you were married?
169 A. When I was 18.
Q. The 7th of October, 1880?
A. Yes, sir.
Q. So that from the time George moved on there until you were married you were in the house something less than ten months?

A. About that.
Q. Did you return of your own accord in July, 1880?
A. Yes, sir.
Q. And stayed there until October?
A. Yes, sir.
Q. Where did you get married?
A. At Sault Ste. Marie.
Q. Whose house?
A. George's house.

JOHN A. COLWELL sworn:

Q. You live here in Sault Ste. Marie?
A. Yes, sir.
Q. Acquainted with the parties in the suit, the Bernier brothers?
A. Most of them, I think.
Q. Acquainted with the defendant Mr. Goff?
A. Yes, sir.
Q. How long have you lived in Sault Ste. Marie?
A. Ten years.
Q. You had an office at one time on Water street in this village with Mr. Goff?
A. I occupied the same room at one time with Mr. Goff.
Q. Where was that?
170 A. In the News building.
Q. The present News building on Water street?
A. Yes, sir.
Q. Do you remember when you left that building?
A. I left it in December some time, in 1882; some time about the first of December.
Q. Do you remember the circumstance of George Bernier coming to that office with some papers in regard to the estate of Edward Bernier?
A. I think I do. He left some papers with me for a time; they were regarding the estate. I could not say what they were now.
Q. Do you remember making some copies for him, certain papers of probate record?
A. I may have done it, but I cannot say that I remember doing so.
Q. Please look at this paper and see if it is in your writing.
A. Yes; that is my writing.
Q. Look it through and see if it is yours.
A. Yes; that is all my writing.
Q. You remember making some copies of probate records—some papers?
A. I do not know that I do recollect it. I know that it is my writing. I don't know when, but to the best of my recollection it was about that time. It certainly was not within the last four or five years.
Q. Do you remember for what purpose you made those copies at that time?

A. Yes; it is my recollection that Mr. Bernier brought in his estate papers to look over. I think there was some land be-
171 longing to Mr. or Mrs. Brown that he did not know whether it belonged to him or them. He thought they might have some rights there, and I looked it up to see what rights Mrs. Brown had.

Q. Do you know whether Mr. Goff was consulted about it after it was looked up and he obtained that copy?

A. Yes; I spoke to Mr. Goff about it.

Q. You had desk room there in the same building?

A. Yes; I think we did talk about it, Mr. Bernier, Mr. Goff, and myself.

Q. At that time who had charge of these papers?

A. I had, I think; I do not know that Mr. Goff had charge of them. It is my recollection that Mr. Bernier left the papers with me a couple of months and then he got them again.

Q. Do you remember any conversation that took place at the time he came in and got the papers?

A. I do not at this moment.

Q. Do you remember whether anything further was done by you in regard to the matter?

A. No, I think not; Mr. Bernier took all the papers away, or else they were handed over to Mr. Goff, I would not be certain which.

Q. What, if any, conclusion was reached and given to George Bernier with regard to getting this property back?

Objected to as immaterial and incompetent.

A. I would not be positive, but it seems to me that it would be a rather difficult thing to do.

Q. Were the grounds stated why it would be difficult to get the property back?

A. I do not recollect distinctly what was said then.

172 Q. Do you remember whether there was among the papers a patent to certain lands?

A. I think so.

Q. Think there was a patent there?

A. Yes, sir.

Q. Do you know what lands that patent covered with reference to the other papers in the business?

A. Yes; it covered the homestead.

Q. This land that was talked about as having been sold or conveyed to Mrs. Brown, was that the same land?

A. Yes, sir; that matter was looked up, I recollect.

Q. What then became of all the papers?

A. I think they were handed back to Mr. Bernier, possibly they were handed to Mr. Goff, but I think I gave them to Mr. Bernier.

Cross-examination:

Q. This Lambert property was also in question, was it not, and a piece to Mr. Trempe?

A. I think I recollect the Lambert property as a piece owned by the estate at one time.

Q. And that was part of the property in your examination, was it not?

A. Possibly.

Q. And also a piece conveyed to Mr. Trempe?

A. I think it was, but I think it was more particularly the homestead that was in question at that time.

Q. Your recollection is not clear about it?

A. It was five or six years ago and I would not undertake to state everything that was said. This paper refreshes me now that I did make the copy.

173 Q. What is that?

A. It is a memorandum from the probate records, I should judge.

Redirect examination:

Q. Is that a correct copy of the records?

A. I don't know as to that. I suppose it was as near as I could make it.

JOHN H. GOFF sworn:

Q. You are one of the defendants in this suit?

A. Yes, sir; I believe so.

Q. Live here in Sault Ste. Marie?

A. Yes, sir.

Q. How many years?

A. Came here in the fall of 1881 and lived here since that time.

Q. Where did you have your office in the year 1882?

A. My office in the fall of 1871–'2 was in the News building on Water street.

Q. You remember the circumstance of Mr. Colwell being there?

A. Yes; in the same office that I was. I think he was there when I came, but I am not sure about that.

Q. And he went away before you left there?

A. Yes, sir.

Q. You remember of his consulting you in regard to certain papers relative to the Bernier estate?

A. I recollect the fact this way, that Mr. Colwell stated to me that certain papers were there, and that if there was any show to

174 get some land back, which was mentioned, I would be wanted to help in getting it back, recovering it, and Mr. George Bernier—I had known of his being in the office and knew what he referred to. I looked at the papers, and stated to Mr. Colwell after looking them over that I thought there should be some copies made of the probate proceedings; it was in reference to some land that had been sold or conveyed to Mrs. Brown.

Q. After the copies had been got who obtained those copies?

A. Mr. Colwell. I did not get them. I looked them over, and Mr. Bernier was in the office.

Q. George Bernier?

A. George Bernier. I then told him of having examined the probate proceedings and the patent of the homestead land, and that any suit brought to recover the land homesteaded would have to be brought in the name of the minor heirs because the patent was in their name. There were other lands that had been sold, which I looked into to ascertain about recovering them back. From that time, after that information was communicated to Mr. Bernier, I think that a paper was given by him authorizing me or Mr. Colweil, one of the two, to act in the premises as attorney, but there was not anything done. As to whether George ever made any suggestions in regard to going ahead with that litigation I have no recollection of anything further. I think he did inform me afterwards that Mrs. Brown had a contract for the homesteaded lands and he was satisfied it was all right.

175 Q. Whether or not any of the other heirs or George made any suggestion as to your keeping what papers were left there.

A. No, sir; they were left there and remained awhile in the possession of Mr. Colwell, and when he moved out I think they remained in the office.

Q. Whether anybody ever called for them.

A. No, sir.

Q. Until George called for certain papers?

A. I have no recollection of any one ever calling for them at all. There was no application made to me to settle any estate; neither were the papers brought to me direct; it was simply to see about seeking to recover the land.

Q. Whether or not they came to you or to Mr. Colwell.

A. They came to Mr. Colwell.

Q. And this was while Mr. Colwell was still having his office with you, or desk room?

A. We were in the same office; we had no connection with each other, except being in the same office.

Q. In the conveyance to you from Alfred Bernier what was the actual consideration?

A. I paid $350 for the lands which are described in the deeds. I paid the consideration which is stated in the deed, which I believe to be $350.

Q. That was in February?

A. The first deed was made in December, 1885. That was the time I made the purchase.

Q. You got the second deed as assurance of title?

A. The first deed did not describe them all fully and I
176 sent down, I think, to a friend of mine in Cleveland and asked him to explain the circumstance to him and to get this deed also, and I afterwards got it.

Q. Whether or not for the purpose of perfecting the description.

A. It was to further describe the land which was omitted by description in the first deed. It might have been described in the first

deed, as it conveyed his interest in all his lands here, but I thought it best to have that.

Q. Whether or not the consideration then paid and stated in this conveyance of December 4th, 1885, was a fair consideration for the property at that time.

A. Yes; I think that it was. Other property is included in this besides the interest in the homestead, and I think it was a fair consideration.

Q. Do you know about what time the deed was given by complainants to Hoel D. Rains?

A. It was some time in the fore part of last year; I think it was in March. I cannot recollect these matters, I have so many of them on my mind.

Q. What was the condition of the real-estate market here at that time?

A. It was very active; sales were being made, and real estate was quite active here at that time.

Q. What was the tendency of prices?

A. They were very good, indeed—the prices that were being paid for real estate.

Q. Do you know what effect this conveyance to Rains had on the sale of property in controversy?

A. I think it had the effect to prevent a sale of it; no one would desire to buy it.

177 Q. Do you know of negotiations at that time in regard to the purchase by other parties?

A. There were inquiries made as to that particular tract of land, as to whether or not it was for sale, and inquiries were made of me. Mr. Stradley said he was interested here with a syndicate which were purchasing lands, and asked me if it was for sale. (Objection is made to all this class of testimony.) Of course, after this deed was put on there was not much talk of selling this property, although other property in its immediate vicinity sold.

Q. Do you know what price property in its vicinity sold for?

A. I have not the price in my mind. I do not deal in real estate as an agent. The Greenough tract up there sold pretty good, and also tracts up this way sold for what we call good prices, running up sometimes to five, six, seven, or eight hundred dollars an acre, I guess.

Cross-examination:

Q. The Greenough piece of 80 acres sold for $2,500. Is that beyond or on this side?

A. It joins it on the west, I think.

Redirect examination:

Q. When did you first learn that the patent ran to the minor heirs?

A. When the patent was brought in with the view of recovering back this land.

Q. Down there on Water street?

A. Yes, sir.

178 Q. Whether or not that matter was fully explained to George Bernier.

A. Yes, sir.

Q. Whether or not the rise in property in the spring of 1887 was general or not.

A. All over the village, you mean? Yes.

Q. And in the vicinity?

A. I think it was; yes, sir.

Recross-examination:

Q. Where did Alfred live at the time you got your deed, Mr. Goff?

A. He is living, I think, in Cleveland.

Q. Did he execute the deed here?

A. He did the first deed. He was paid the consideration here and executed the first deed here.

Q. Any of the rest of the heirs with him when he made his transfer?

A. I do not recollect of any one being there at that time.

Q. Do not recollect of any of the rest being there at that time?

A. No, sir; he knew at that time about the estate.

Q. Did he say anything about the homestead at this time, about George, about his not being able to get anything from the homestead on account of George occupying it?

A. Not that I recollect of, not in that way, not about George particularly. They had previous to my getting the deed from him. He had been informed by me that the patent conveyed the title to the minor heirs. There had been others in the office.

179 Q. You had understood about George having this contract with the other heirs?

A. Yes. I understood there was this paper in existence.

Q. You knew George was occupying and cultivating the homestead?

A. I knew that—no; I did not know George was on the homestead, because my information from testimony he had given in the other cases was that he was not on the homestead.

Q. You knew that the family had lived on there and that George lived there from '79 for a number of years?

A. I do not think that I had inquired so fully as that into the matter.

Q. You went down there, did you not, in the spring of last year to see if you could get the man in the house to move out?

A. No, sir.

Q. Send somebody down?

A. I had a complaint brought to me that there was a man occupying a house of ill-fame, and I caused the sheriff to see him—Mr. Bernier.

Q. That is recently?

A. Five or six months ago. I have never been down to the premises to drive anybody away.

Q. You had a general knowledge of the homestead—how it was being worked and what was being done with it?

A. No, sir; I had not a general knowledge. From the time
180 that the negotiations were dropped, in 1882, up to the time that Mr. Fred. Bernier came to town I had not taken any particular notice of the matter at all.

Q. You knew from your talk with George in 1882 that there were some ten heirs?

A. I knew that Edward Bernier died leaving ten children—yes, sir.

Q. You knew they were all living in 1885 or 1886?

A. I did not know that any had died.

Q. In 1882 George had left with Mr. Colwell and Mr. Colwell had shown you certain documents with reference to the Bernier estate?

A. Yes, sir.

Q. Among them, you say, was a patent?

A. Yes, sir.

Q. And also this contract, signed by some six heirs?

A. Yes, sir.

Q. At that time you knew that George was working the homestead?

A. I think I had a knowledge of what was in that contract.

Q. Did you not know that George was living on the homestead and that some of the children were living with him in 1882?

A. Yes.

Q. And prior to that time?

A. I could not say as to that. I had nothing to impress that on my mind.

Q. Were you not under the impression at the time you bought from Alfred Bernier that somebody was in possession of this property, cultivating and using it?

181 A. I had no impression at the time I bought; there is nothing comes to my mind now.

Q. Do you want us to understand, Mr. Goff, that you thought it was simply a wild piece of property?

A. No; I knew where it was located; I knew by the map.

Q. Did you not know it was being used by somebody?

A. No, sir; I bought it in winter.

Q. Did you not know that it had been used the summer before?

A. No, sir; I did not; I have no recollection of it now; I have nothing to call my attention to it that I recollect of.

Q. Did you inquire at the time you bought whether anybody was living on it?

A. I don't think I did.

Q. Made no inquiry at all?

A. I don't think I did.

Q. You knew that the man you were buying from was not in possession?

A. I knew he was living somewhere else.

Q. Did you know that any of the heirs were occupying it or using it?

A. I don't think I knew anything about it, except that Fred., from what he said, was living in Cleveland.

Q. And that he was not living on it and did not have a tenant?

A. Yes, sir; I don't think I knew as to any of the heirs occupying it; I may have been informed, but I do not recollect now.

Q. Were you not informed by George at the time he took
182 it—the time he talked with you—that he was taking care of the estate and was living on the homestead?

A. I have no recollection: of course that is a long time ago.

Q. Did you know he was looking after the estate?

A. I knew that so far as this matter about his getting back the land was concerned, that George was the man who did the talking, and I knew he was the one who had dropped the talk.

Q. Did not George tell you he was living there on the homestead in 1882, and had charge of it and was cultivating it?

A. I do not recollect whether he did or not.

Q. Would you swear whether he did or not?

A. No, sir; I would not; he might have told me that, so far as that is concerned.

Redirect examination:

Q. The patent that was exhibited to you then was the original patent as exhibited in this suit, was it not?

A. Yes, sir; it was the patent that you have there; I should judge from this distance that is the patent which was handed to me.

Recross-examination:

Q. These papers which were left in Mr. Colwell's hands remained in your hands for some considerable time?

A. Yes; I have got most of them yet.

Q. Some of them you returned in the winter of 1885–'6?

183 A. George came there and said there were some he wanted to get, but that would be somewhere in the summer or fall of 1886. He came there and said he wanted some of the papers and told me what he wanted, and when I saw what they were I said: "You had better let me take copies."

Q. And you took copies and returned the originals?

A. Yes, sir.

Q. How many papers did he take?

A. So far as I can recollect he took three papers. He took one, which was the administration account, and he took this matter here which has been introduced as a contract, and one other—the inventory. They all seemed to me to be in view of the fact that the estate was unsettled, and it seemed to me proper to have copies.

Redirect examination:

Q. The same as introduced in evidence here?

A. Yes, sir; on the back of that patent at the time it was submitted to me, in 1882; it bore the endorsement, "Minor heirs of E. Bernier, deceased; received for record this 5th day of June, A. D.

1877, and recorded in Liber 6 of Deeds, folio 212; Geo. W. Brown, deputy register of deeds;" also, "Entered on receiving book; fees, 75c."

Q. You never refused to give George or any other of the heirs any papers they called for?

A. No, sir; not that I recollect of. They could have anything they wanted of them.

Defendants offer in evidence the record of a warranty deed,
184 dated March 30th, 1887, recorded April 2d, 1887, in Liber 19, page 76; consideration, $1,000, purporting to convey an undivided one-half interest in the east fractional half of the north-east quarter of section eight, town. forty-seven north, of range one east, and other lands from Calixte D. Bernier and wife, George Bernier and wife, Samuel F. Bernier and wife, Louis G. Bernier and wife, and William Bernier and wife to Hoel D. Rains.

Complainants make no dispute as to the title remaining in the defendants Goff, Matilda Bernier-Endress, and Edward Bernier—such title as they have in the lands in dispute.

STATE OF MICHIGAN, } *ss:*
County of Chippewa, }

I hereby certify that the foregoing testimony, taken in open court on the trial of said cause, with the exhibits thereto attached, was this day presented after due notice to counsel for complainants, who was present and represented by L. F. Bedford, of counsel in said cause; that the foregoing is a true copy of the testimony taken upon the hearing therein in open court and of all of said testimony, and by consent of parties is this day settled and certified as such pursuant to the rules and practice of this court.

Dated July 17th, A. D. 1888.

J. H. STEERE,
Circuit Judge.

185 STATE OF MICHIGAN:

Supreme Court. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH BERNIER, MARY BERNIER-ENDRESS, Matilda Bernier-Endress, Edward Bernier, and John H. Goff, Defendants.

Supplemental Record.

Examination of LOUIS G. BERNIER resumed:

Q. What is your age?

A. Thirty-eight years.

186 Q. What is your birthday?

A. The 19th of April I will be 38.
Q. Do you know what age your brother William is?
A. Pretty near.
Q. Do you know when his birthday is?
A. The first of November.
Q. When you were acting as administrator of your father's estate what, if anything, did you have to do with this property in dispute, known as the homestead?
A. I had the whole charge of it, as I had the charge of the rest of the property.
Q. What did you do with it?
A. I cleared some of the land there, plowed it, and fixed it up.
Q. Cropped it?
A. Yes, sir.
Q. What did you do with the proceeds?
A. I could not get enough to pay the expenses.
Q. You devoted the proceeds or its equivalent to the expenses of the property?
A. Yes, sir; I could not keep up the expenses with what I could get on the property.
Q. Did you also have charge of the other property belonging to the estate?
A. Yes, sir.
Q. Consisting of personal property, farming utensils, etc.?
A. Yes, sir.
Q. You heard this list read over to your brother George this morning?
A. Yes, sir.
Q. Did you have possession of the other real estate as well?
187 A. I had the whole of the real estate altogether.
Q. Who paid the taxes?
A. I did.
Q. On this property below?
A. Yes; on everything; everything was included together.

Witness is shown Defendants' Exhibit 3, his account of administrator, and is asked:

Q. Do you recognize that document?
A. I do not know if I can read it.
Q. See if your name is signed to it on the other side.
A. Yes; that is my writing.
Q. I call your attention to the following item in that account, and ask you to explain it: "To amount paid on land first homesteaded and then paid for, 90." What was that?
A. That was the time when Sam. went to Marquette.
Q. What did he go to Marquette for?
A. To commute the homestead.
Q. The property now in dispute?
A. Yes, sir.
Q. Did you, as administrator of the estate, advance that to pay for the land under the commutation proceedings?

A. Me and one of my brothers.
Q. Which one of your brothers?
A. Calixte.
Q. Was that when Sam. went to Marquette to pay for the land under the commutation proceedings?
A. Yes, sir.
Q. There is an item here, "Paid taxes of 1879, $20.20." On what property were those taxes?
188 A. Those taxes were on all the property we owned then, altogether then.
Q. Including the homestead?
A. Yes; certainly.
Q. It was always handled the same as the rest of the property of the estate?
A. Yes, sir.
Q. There is an item here in your account, "To amount charged as taxes and expenses, $57.00." What was that for?
A. That I could not tell you just now.
Q. Did you have a settlement with the heirs?
A. I had a settlement with the heirs in '79, in March.
Q. Was that the time that property was all turned over to George?
A. Yes, sir.
Q. And this was a statement of the account between you?
A. Yes, sir.
Q. Now, Mr. Bernier, have you had any conversation with any of the younger members of the family since they came of age concerning this property down here that is in dispute?
A. I never heard any other way, but that it was included altogether.
Q. Was any claim made to you, except that this property belonged to all the heirs?
A. I never heard to the contrary until about a year or so ago.
Q. Who told you then?
A. I think it was George or Ed., I forget which.
Q. What did they tell you?
A. They told me the patent was issued to the minor heirs.
Q. Was that the first time you learned of it?
A. Yes, sir.
189 Q. Did you ever have any talk with the other heirs about dividing the estate up?
A. I do not recollect.
Q. Who occupied this homestead or worked it or who lived on it after your father died up to the time George went there?
A. Mrs. Jondreau lived there.
Q. How did she come to live there?
A. She was living there the time my father died.
Q. Did she pay rent to you after your father's death?
A. No, sir.
Q. How long did she remain there?
A. I guess, until the fall of that year.
Q. Anybody go in after she left?

A. Yes; a Frenchman went in afterwards.
Q. A Frenchman; change of race, was it?
A. No, sir; just the same.
Q. How long did the Frenchman stay in?
A. A little while in the summer. I don't know.
Q. Did he pay rent?
A. I guess he did.
Q. To you as administrator?
—. ——.
Q. Do you remember what rent you got?
A. I think I got a couple of dollars a month.
Q. After he lived there, did anybody else occupy it under you?
A. No, sir.
Q. Did you live there at all?
A. No, sir.
Q. Where did the family live after your father's death until they went down there with George?
A. On Portage avenue.
190 Q. With you?
A. Yes, sir.
Q. From time to time you received money belonging to the estate, I suppose?
A. But once; that is all I received.
Q. Now, was there any difference made, at any time, up to the time you were told about the patent being issued to the minor heirs in regard to the treatment of the property—this homestead property—the payment of taxes or collection of what little rent there was on it, from that of the other property in the estate?
A. No, sir; I never heard anything of it.
Q. Always the same?
A. Always the same.
Q. What was Edward's age at the time of your father's death; do you remember his birthday?
A. Yes, sir.
Q. What is it?
A. The 15th of June.
Q. Now, what was Mary's birthday?
A. On the 6th of June.
Q. What year?
A. Mary was born in 1856.
Q. Mary was of age before you were discharged as administrator?
A. Yes, sir.
Q. Now, Edward came of age in 1879, did he not?
A. Yes, sir.
Q. Did you ever hear Edward make any claim after he came of age up to the time you heard a year or so ago that the minor heirs owned this property, all?
A. No, sir.
191 Q. Or did you ever hear any of these heirs, after they became

of age, until the matter arose a short time ago, make any claims of the exclusive ownership in this homestead?

A. No, sir; I did not.

Cross-examination:

Q. When was it that George told you that the patent ran to the minor heirs, or Ed.?

A. I think about a year or so ago.

Q. A year or so ago?

A. Yes, sir.

Q. What is the best of your recollection as to whether it was George or Ed.?

A. I could not tell exactly. I could not say. It was one of them.

Q. Did George or Ed. tell you how he found out that it belonged to the minors?

A. They told me they found out after Fred. sold.

Q. When Fred. sold they found it out?

A. Yes, sir.

Q. Do you understand that the management of the estate by you brought in no net revenue?

A. No, sir.

Q. There was nothing realized by the management of the property above expenses?

A. I could not pay expenses. I had to take money out of my pocket.

Q. Did you try to crop the homestead?

A. Yes, sir.

Q. Did you try to rent the various other pieces of property?

A. I have rented a little—some part of it.

192 Q. How much money do you think you received altogether from rent before you turned matters over to George?

A. I don't know.

Q. You have no idea? A hundred dollars?

A. I do not suppose I did; no, sir.

Q. You never kept any track of it?

A. No, sir; because I cannot write.

Q. You never had anybody else keep a minute of it?

A. No, sir.

Q. You have no idea what you took in as rent?

A. I know it was very little.

Q. Sell any hay or crops or anything off the homestead of any kind?

A. Yes; I sold three or four ton of hay altogether.

Q. A year?

A. No; altogether.

Q. There was a piece of property on Ridge street here?

A. Yes, sir.

Q. Was there a tenant in that house on Ridge street?

A. There was no house on it then.

Q. Vacant?

A. Yes, sir.
Q. House built afterwards?
A. Yes, sir.
Q. Did you build a house on it?
A. Yes, sir.
Q. After you signed the statement?
A. Yes; after I turned everything over to George.
Q. Did you live in the house?
A. Yes, sir.
193 Q. Ever pay any rent?
A. No, sir.
Q. Ever ask you for any?
A. No, sir; I asked my brothers and sisters and they said it was all right; I could go there and build.
Q. You did not expect to pay any rent?
A. No, sir; not until we settled the estate.
Q. When you signed this paper with the other boys you had no further settlement?
A. I had no further settlement until I got a settlement with the judge of probate, when I turned everything over to George.
Q. You had a settlement?
A. Yes, sir.
Q. As administrator or guardian?
A. Of everything.
Q. Of everything?
A. Yes, sir.
Q. There is an item on this statement, "1878, to amount paid by Lambert"?
A. That is to pay the debts of my father.
Q. How was this realized?
A. I got it from the Lambert corner.
Q. You sold some of the estate?
A. Yes, sir.
Q. And Lambert was the purchaser?
A. Yes, sir.
Q. How much did he agree to pay for it?
A. Eighteen or nineteen hundred dollars.
Q. And you received $800.00?
A. Yes; I received it, but it was to pay the debts.
194 Q. Did you receive any more from him?
A. Yes; I received two hundred and some odd dollars.
Q. Aside from the eight hundred dollars and the two hundred and thirty dollars and twenty-four cents, did you ever receive any other money from him?
A. No, sir.
Q. You only received about a thousand and thirty dollars?
A. That was the only two times I got any money from him.
Q. Did you ever get any note or mortgage from Lambert?
A. Yes, sir.
Q. What did you do with that?
A. Turned everything over to George.

Q. This Lambert piece; is it on Water street?
A. Yes, sir.
Q. Sell any other property?
A. Sold down the road on Portage avenue.
Q. Who bought that?
A. L. P. Trempe.
Q. How much did he pay?
A. Nineteen hundred and some odd dollars, or nineteen hundred.
Q. That was not brought into your account at all. How was it that did not appear in your account at all?
A. I could not tell you.
Q. How much did he pay down in cash at the time of the sale?
A. That was sold to pay up what my father owed him.
Q. Owed whom?
A. Mr. Trempe.
Q. Well, in your statement you do not credit yourself with any claim paid Trempe?
A. I could not say; I cannot do any of that writing business.
195 Q. Have you any recollection in making your statement about having paid Trempe?
A. I thought everything was credited up.
Q. Did you receive any money from Trempe?
A. No, sir.
Q. Sold the land to balance his debt with your father?
A. Yes, sir.
Q. Was there any other property sold by you?
A. No, sir.
Q. Only these two pieces?
A. Yes, sir.
Q. Do you know whether you were credited with the notes from Lambert that were turned over to George on your account?
A. The money that he paid for it; of course, he got his note fixed up.
Q. Well, in the settlement were you credited with the note?
A. I suppose I was.
Q. You think you were?
A. Yes, sir.
Q. How much did you turn over to George in March, '79—how much money?
A. I turned — him everything that was coming, but could not tell exactly what.
Q. Did you turn him over any money?
A. No; not cash.
Q. But stuff—teams, wagons, and such?
A. Yes, sir.
Q. No cash?
A. No, sir.
Q. The Lambert sale brought $1,800.00?
196 A. Either $1,800.00 or $1,900.00; I could not tell exactly.

Q. Well, you charge yourself here with $1,036.00. What became of the other?

A. George got it, very likely.

Q. What did you do with it?

A. I turned the Lambert mortgage — to George.

Q. How much was that?

A. The balance, whatever it amounted to.

Q. Well, now, you credit yourself in one place, "Amount of money paid Calixte." Did you loan him $100.00 out of the estate money?

A. Yes, sir.

Q. That came out of the money received from Lambert or other property?

A. Yes; from Lambert.

Q. How long had Calixte this $100.00 when you had this settlement with your brothers?

A. He had it about six months; could not tell exactly.

Q. Did you pay it to him soon after the Lambert sale?

A. Yes; after.

Q. Soon after, was it?

A. I guess after that.

Q. Was it out of the money you received from the Lambert sale?

A. Yes; certainly.

Q. How long was Calixte to have that before he paid it back?

A. Until the estate would be settled.

Q. Did he give you a note?

A. I guess George must have it in his possession.

Q. Do you know whether you turned it over to him?

197 A. Yes, sir; certainly.

Q. You did?

A. Yes, sir.

Q. Do you know what rate of interest Calixte was to pay for that money?

A. I could not tell you.

Q. Had any amount been paid to you on the note by Calixte when you turned the note over to George?

A. No, sir.

Q. When you signed the statement with the brothers how did the account stand, in your favor or in favor of the estate?

A. When I settled with my brothers I had one hundred and some odd dollars coming to me.

Q. Was that paid by them?

A. I got some money from the estate through George.

Q. At that time or later?

A. Afterwards.

Q. How much?

A. I could not tell you.

Q. How much remains unpaid now?

A. I could not tell you.

Q. The time you sold to Lambert by administrator's sale was there a written contract made between you and Lambert?

A. There was a mortgage.
Q. Any other papers?
A. A note.
Q. Was there a contract?
A. I could not tell you.

The witness is handed a paper-writing purporting to be a contract between Louis Bernier and Mrs. Margaret Lambert, and is asked:

198 Q. Won't you examine that paper and see if that is your signature?
A. Yes; that is my signature.
Q. Is that Lambert's signature?
A. I guess it is.
Q. Do you write?
A. I can write my name and that is all.

Witness is shown a paper-writing purporting to be a petition to sell real estate, in the probate court for Chippewa county, in the matter of the estate of Edward Bernier, deceased, and is asked:

Q. Is the name of Louis Bernier attached to that paper your sig-signature?
A Yes, sir.

The contract is offered in evidence and marked "Def. Ex. 4."
The petition is offered in evidence and marked "Defendants' Exhibit 5."

Q. Did you ever have any settlement with the minors?
A. I had a settlement for all when I got settled and turned everything over to George.
Q. You had no settlement with the minors themselves in person, did you?
A. No, sir.
Q. At no time?
A. No, sir.
Q. You said something about a settlement in the probate court.
A. Yes, sir.
Q. Did you have that before or after the time you turned things over to George?
A. It was at the time.
199 Q. After the time George went to the homestead you never had any settlement with anybody?
A. No, sir; I had no right and had no more to do with it.
Q. Was the $90.00 that Sam. took to Marquette out of the Lambert money?
A. No, sir.
Q. Where did you get that $90.00?
A. Sold a piece of land to get it.
Q. What piece of land?
A. About five miles back of the town, on the hill.
Q. How much of that land was there?

A. Eighty acres.
Q. How much did you receive for that?
A. Ninety dollars.
Q. Was this sold by you as administrator?
A. This did not have anything to do with the estate business.
Q. Who made that sale for $90.00?
A. I did.
Q. Sell your own property?
A. Yes, sir.
Q. That $90.00 was your own money?
A. Yes, sir.
Q. Why did you charge the estate with it in your settlement?
A. That was used for that piece of land.
Q. Did you have any money belonging to the estate at that time out of which you could pay $90.00?
A. No, sir.
Q. What was the trouble about raising the money on the Lambert note and mortgage?
A. We had no Lambert note and mortgage at that time.
200 Q. Do you know about how much this personal property turned over to George appraised?
A. I turned — everything there was.
Q. Do you know about what it was estimated to be worth at that time?
A. I could not tell.
Q. Do you know anything about it being appraised by Mr. Easterday?
A. Yes; Mr. Easterday and Mr. Scranton.
Q. You do not know what it was appraised to be worth?
A. No, sir.
Q. Was it worth $100?
A. I could not tell you.
Q. Did you make any effort to raise the $90.00 at the time?
A. I did not have any authority to sell any of the estate property at that time.
Q. Then you advanced the $90.00 for the estate before you became administrator?
A. I was appointed, I guess—I could not tell you whether I was on the estate at that time.
Q. Do you remember whether at the time you paid this $90.00 you had possession of the stuff?
A. Yes; I had possession.
Q. Was there any money paid besides this $90.00?
A. Mr. Brown furnished some money.
Q. Who requested him to furnish it; do you know?
A. We did not have money enough to pay for the whole thing, so we sold him the ten acres to get the money to pay for the whole thing to clear up this piece of land.
Q. Was that a part of the homestead?
201 A. Yes, sir.

Q. And it was in addition to the twenty acres which he claimed to hold before that under a contract with your father?

A. Yes, sir.

Q. And you put in ten acres more to get this extra $100.00?

A. Yes, sir.

Q. Who actually made that agreement with Mr. Brown to get $100.00 more?

A. It was between us.

Q. Name the parties.

A. It was Sam. and Calixte, and I spoke to Bill, and the minor heirs knew it, that we wanted to get the money.

Q. They knew it?

A. Yes, because I said it right in the house. They were all with me.

Q. After you sent the $90.00 and $100.00 by Sam. the patent came later, did it?

A. I do not know what time the patent got here.

Q. Who actually received it?

A. I don't know.

Q. When did you first see the patent?

A. In winter it was given to me.

Q. What winter was that?

A. I could not tell you exactly.

Q. How long before you turned matters over to George did you receive it?

A. About a year or a year and a half; probably more; probably less.

Q. Who took it to the office to be recorded?

A. I could not tell you.

202 Q. Did you get it out of the post office?

A. No, sir; I got it out of the register of deeds' office. I guess it was Ebenezer Warner.

Q. What did you then do with it?

A. Took it away.

Q. Did you keep it all the time you assumed to act as administrator?

A. Yes, sir.

Q. And then with other papers turned it over to George?

A. Yes, sir.

Q. Was it generally known in the family when the patent was issued?

A. Yes, sir.

Q. It was known the patent had come here?

A. Yes; when I fetched it home I told them it was the patent to the homestead?

Q. Was it generally known to the family, yourself and the brothers and minors, when this patent issued from the land office and was sent here through the post office at Sault Ste. Marie?

A. I could not tell you that—could not tell you when it came to the Soo.

Q. How did you come to tell the children about it?

A. I had it in my hand and told them.
Q. Where was that?
A. In the blue house.
Q. Who was there?
A. All the family except William and Calixte; all the rest, I guess, was there, pretty near.
Q. You took the patent out and showed it to them?
A. Yes, sir.
203 Q. You held it in your hand?
A. My sister Mary put it away.
Q. She put it away?
A. Yes, sir.
Q. Where was it kept in the house?
A. In a chest where we have all the rest of the papers?
Q. Before it was put away in the chest was it opened and looked at by you and your brothers?
A. I could not tell you.
Q. Kept it in the chest until you handed it over to George?
A. Yes, sir.
Q. Ever have it out for any purpose?
A. Not that I remember.
Q. Was the patent in your possession or had it been passed over to George when you learned from George or Ed. that it ran to the "minor heirs"?
A. George had it.
Q. George had it?
A. Yes, sir.
Q. Did you ever hear anything about George or anybody else trying to get back any land that had been sold by you as administrator?
A. I did hear something about that, but I was not around here at the time. I have hear- something of it and that is all.
Q. About when did you hear this?
A. That I could not tell you.
Q. About how many years ago—five or six years?
A. I could not tell exactly; must have been somewheres around there.
Q. Did you hear how it resulted, this endeavor to get back some of this property?
204 A. I heard it was dropped.
Q. Who told you it was dropped?
A. They wanted to put me into it, and I told them I would not have anything to do with it, and that was the last I heard of it.
Q. Can you recollect when you told this to Mr. Goff—five or six years ago?
A. I could not tell you exactly.
Q. Do you remember where Mr. Goff's office was?
A. On Water street, I think.
Q. In the News building?
A. I am not certain, but I think it was.

Q. Did you learn at that time why it was dropped, this talk about getting the land back?

A. No, sir; I did not learn the reason of it.

Q. Did you learn anything about why they did not go on?

A. No, sir; I never inquired.

Q. Nor knew why it was dropped?

A. No, sir; never inquired into it.

Q. Did you hear anything about George being advised that the only ones that could get back the land were the minor heirs, because the patent ran to them?

A. Not that I know of.

Q. Did you hear that talked by any other of the boys?

A. Which?

Q. That the land had to be got back by the minor heirs; it could not be got back by the older boys—the land you sold.

A. No; I never heard anything about that; not that I mind.

Redirect examination:

Q. Did you ever read the patent?

A. No, sir.

205 Q. Can you read?

A. Not good enough to read any such writing.

Recross-examination:

Q. Cannot read writing very well that is written with the pen?

A. No, sir; can read my own name; that is all.

Q. Read print?

A. Very little.

Q. Do you read the newspapers?

A. Very little because I cannot understand what I am reading about, so I do not read much of it.

Q. You went to school and learned to read a little when you were a boy?

A. A little, but not much.

Q. When you went to school you learned to read some?

A. Yes; I could write my name when I left school. I was a pretty good scholar then.

Q. You read in school. You were in a reading school?

A. Yes; I used to be in the first part of the first reader.

Redirect examination:

Q. Did your father live on this land with the family before he homesteaded it?

A. No, sir; not that I know of.

Q. Were you born here in the Sault?

A. Yes, sir.

Q. Had he possession of that property any time before he made the homestead there?

A. He had possession ever since I can remember.

Q. House on it?

A. Yes, sir.
206 Q. Been living on it?
A. He had a little house and was living on it, but before I can recollect.
Q. When was that house destroyed?
A. I cannot tell.
Q. When he homesteaded he built another house?
A. Yes, sir.

Recross-examination:

Q. He lived on the Mission lands quite a spell, did he not?
A. Yes, sir.
Q. Before he went onto this land at all?
A. No, sir.
Q. And he left it and went onto the Mission lands?
A. He never left it.
Q. Did he have any house on it while he lived on the Mission lands?
A. Yes, sir.
Q. Did not he live with his family on the Mission about ten years?
A. Nine years.
Q. Well, during that nine years he did not have a house on the homestead?
A. Yes, sir.
Q. Is that the house that is destroyed?
A. Yes, sir.

CALIXTE D. BERNIER sworn:

Q. Mr. Bernier, where do you reside?
A. At Sault Ste. Marie.
Q. You are one of the parties in this cause?
207 A. Yes, sir.
Q. What is your age?
A. Forty; born in 1848, January 22nd.
Q. Where were you residing at the time of your father's death?
A. Here in town.
Q. Married at that time?
A. Yes, sir.
Q. Living in your own house?
A. Yes, sir.
Q. Do you remember when your father died?
A. Yes, sir.
Q. Where were the rest of the family living?
A. At home.
Q. With your father?
A. Yes; at the old home.
Q. Did you pay any portion of the money for the purchase of the homestead?

A. Yes; Louis and I sold a piece of land and gave a portion of that money towards paying for the patent.

Q. To whom did you give the money?

A. I don't know; Louis handled it; to Sam., I believe.

Q. Do you remember George living down on the place?

A. Yes, sir.

Q. Do you remember of its being cultivated from the time of your father's death to the present time?

A. Yes, sir.

Q. By whom was it cultivated?

A. After George took the administratorship he did the cultivating himself.

Q. Who did it before that?

208 A. Louis.

Q. How was that property treated as to whether it was a part of your father's estate and belonged to all the heirs or not?

Objected to as immaterial.

A. It was all one piece; never knew there was any difference.

Q. When did you first learn of the patent being issued to the minor heirs instead of to all?

A. When Mr. Goff bought a part of it from Fred. Fred came to me and told me that the patent had been issued to the minor heirs and that Mr. Goff and himself were going to straighten it up.

Q. What did he say about the property being divided?

A. He wanted to get it fixed in some shape so it could be divided equally.

Q. Between whom?

A. Between all the heirs.

Q. That was the first time you ever heard of it?

A. Yes, sir.

Q. Have any talk with the others about it?

A. I did with Ed., and I don't know but I did with my sister Mary, and remember they talked, particularly Will., and he said it did not make any difference about the patent being issued to the minors, as it would be divided equally between the entire heirs. They talked that way until about a year ago when they changed their minds.

Q. Did you ever get back any of the money you advanced?

A. No, sir.

Q. Do you know of the children or younger people paying any money for this land?

A. No, sir.

Q. How long did Ed. stay there?

A. About a year, I should think; may have stayed longer.

209 Q. How long did Fred. stay?

A. I could not say.

Q. Was there any work done on the land after your father died in the matter of improving it?

A. I could not say. I have not been on it to see; never walked over the land to see if there had been anything done.

Q. Did you deed any portion of the land covered by the patent to Mr. or Mrs. Brown?

A. Yes, sir.

Q. When?

A. Some years ago we gave a contract, and last year I gave a deed, a quitclaim deed.

Q. Do you know of any others of your brothers making conveyances to him?

A. They say they did, and I know Mrs. Endress did.

Cross-examination:

Q. You and your wife executed a deed last summer?

A. Yes, sir.

Q. What consideration was paid for it?

A. The consideration was nothing. It was according to a bargain made by father with Mr. Brown; according to contract.

Q. After your father died you signed some agreement with Mrs. Brown?

A. Yes, sir.

Q. In which you undertook to have the minor heirs deed as soon as they became of age?

A. Yes, sir.

Q. Do you know what money was paid at that time?

A. I do not, sir.

Q. Did you receive any?

210 A. No, sir.

Q. Do you know why the property was sold at this time?

A. I do not know what it was sold for; the land was not worth anything; could hardly give it away in those days.

Q. Was there any money realized from the sale by anybody?

A. I could not say.

Q. So far as you know there was nothing received for these minors' interests in that sale?

A. Yes; I know there was money received.

Q. How much?

A. I believe it was $500.

Q. Who received that?

A. Mrs. Endress.

Q. Now, about this contract that was signed by you, in which you agreed that the heirs should sign when they became of age, what money was received then?

A. No money.

Q. That covered ten acres of land that never was conveyed before?

A. No, sir; that ten acres of land we got paid for it.

Q. How much?

A. I don't remember; I think $100.

Q. Who received that money?

A. I think it was Louis.

Q. What was done with it?

A. I could not say, except that it was to pay for the patent.

Q. You contributed some to help at the time the patent was taken up?

A. Yes, sir.

Q. How much?

A. Louis and I gave between seventy and eighty dollars.

211 Q. That you paid?

A. Between myself and brother. We sold a piece of land and handed it to Sam.

Q. How much of that was yours?

A. Half of it.

Q. Was that about the time the money was sent to Marquette?

A. Yes, sir.

Q. Did you have from Louis afterwards $100, money of the estate?

A. Yes, sir.

Q. And gave your note for it?

A. Yes, sir.

Q. Was this money that you gave Louis to send to Marquette credited on the note?

A. I don't know what became of it.

Q. You never received any credit on that note?

A. It was before the note I gave that money.

Q. And afterwards you borrowed $100?

A. Yes, sir.

Q. And that stands as it did when you borrowed it?

A. Yes; and it stands the same as the $80.00.

Q. Ever pay back any portion of the note?

A. No, sir.

Q. Ever see this note since you gave it to Louis?

A. Yes; I saw it once.

Q. Ever pay any interest on it?

A. No, sir.

Q. Do you remember what rate of interest this note drew?

A. I think it was 7 per cent.

Q. Do you know how long it was given for?

A. Until everything was straightened up.

212 Q. Any time named in the note?

A. No, sir.

Q. Was it a promise to pay him as administrator or to Louis Bernier?

A. Promise to pay Louis Bernier or order; I don't know whether it was order or bearer.

Q. There was nothing in regard to administrator on it?

A. No, sir.

Q. No time was specified when the note should be paid?

A. No, sir.

Q. You received this $100.00 from Louis while he was acting as administrator?

A. Yes, sir.

Q. Did he ever ask you for any part of the principal or interest?

A. No, sir; nobody has ever asked me for a cent.
Q. Do you remember about when Fred. sold to Goff?
A. I think it was in the fall of 1885.
Q. Do I understand you to say that before the sale was made by Fred. he told you the patent was issued to the minor heirs?
A. Just a few days before he sold he came here to settle up, and that is where he let out that the patent was made to the minors, and next thing I knew he sold and was gone. That was all the straightening up he did.

GEORGE BERNIER recalled:

Q. You have your tenth interest in this tax deed?
A. I have some other property in my own name.
Q. Mostly in your wife's name?
A. No; I do not have to put my wife's name on any paper to hide my debts.
213 Q. How many acres stand in your name?
A. Eight acres in Sugar island.

Objected to.

Q. Wild land?
A. Good timber land, worth a good deal of money.
Q. It is woods; never been cleared?
A. It is worth more than if it was clear.
Q. But it is a fact that it is woods?
A. Yes, sir.
Q. What is it worth?
A. I was offered $20.00 the other day.
Q. When was that?
A. About ten days ago.
Q. And you refused to sell?
A. Yes; I wanted the timber for my own use. I would not take $50.00.
Q. What other land have you in your own name?
A. That is all.
Q. What have you in your wife's name?
A. One town lot.
Q. On what street is that?
A. Portage.
Q. Between what streets on Portage?
A. Between Portage and Maple, facing Portage, and running south to the alley half way between Portage and Maple.
Q. What street crosses Portage west of it?
A. There is no street up to the Greenough addition.
Q. What private claim?
A. One hundred and twenty three.
214 Q. How many feet frontage on Portage?
A. I think 52.
Q. Any other property in your wife's name?
A. No; that is all.
Q. Do you rent where you live?

A. Yes, sir.
Q. On the Mission property?
A. Yes; I have a lease of it.
Q. What is the value of this lot on Portage?
A. I don't know; like any real estate, up one day and down the next.
Q. Your prices are not as fixed as on Sugar island?
A. I could have sold it last spring for $1,800.00, but did not want to sell. That property on Sugar island, I am going to hang onto it.
Q. Have any recollection of the amount of money you paid Ed.?
A. I don't know.
Q. Ten dollars?
A. I don't know if it was ten or two or one.
Q. Do you think it was a large amount?
A. I don't know.
Q. You owed him some when you paid this?
A. Not that I know of.
Q. You will swear it was not borrowed money?
A. I gave him an order to get it out of the estate money.
Q. Did you not owe him at the time?
A. Not that I know of.
Q. Take any note for it?
A. No, sir; kept the order on file after he had signed it—after he got the money.

215 Two tax deeds offered in evidence, marked "Compl'ts' Ex. G & H."

Objected to as incompetent, immaterial, and irrelevant.

Complainants offered in evidence page 270 of Liber 18, record of deeds of Chippewa county, being a warranty deed from Samuel Bernier and wife to Helen C. Brown, a conveyance of a portion of the property covered by this patent by one of the older heirs, dated the 19th day of April, 1886, same being to cover lot two, the southwest quarter of the northwest quarter of section nine and the east 30 acres of the southwest quarter of the northwest quarter of section nine, town. forty-seven north, of range one east, Pl't'ffs' Ex. D.

Objected to as incompetent, irrelevant, and immaterial.

Complainants also offer on page 300, from the same parties to the same parties, a warranty deed covering the same property, Pl't'ffs' Ex. J.

Same objection as above.

Also page 362 of the same book, warranty deed from William Bernier and wife, George E. Bernier, and Louis Bernier to Helen C. Brown, dated the 17th day of April, 1886, covering the property in the last-described exhibits, Pl't'ffs' Ex. K.

Same objection as above.

Also page 130 of Liber 17 of records in the office of the register of deeds, being a quitclaim deed from Alfred Bernier to John H. Goff, dated the 3d day of December, 1885, covering the land in controversy in this suit and other lands, consideration $350.00, L.

Also page 164 of the same book, Alfred Bernier to John H. Goff,

being a quitclaim of the west half of the west half of the southwest quarter of the northwest quarter of section nine, town. forty-seven north, of range one east, consideration one dollar, dated the 20th day of February, 1886, M.

The last two exhibits are received in evidence without objection.

216 EXHIBITS.

(For Plaintiffs' Ex. A see Defendants' Ex. No. 6.)

PLAINTIFFS' EXHIBIT B.

(*Copy of Original U. S. Patent.*)

Certificate No. 10054.

The United States of America to all whom these presents shall come, Greeting:

Whereas the minor heirs of Edward Bernier, deceased, of Chippewa county, Michigan, have deposited in the General Land Office of the United States a certificate of the register of the land office at Marquette, Michigan, whereby it appears that full payment has been made by the said minor heirs of Edward Bernier, deceased, according to the provisions of the act of Congress of the 24th of April, 1820, entitled, "An act making further provision for the sale of the public lands," and the acts supplemental thereto, for the east half of the northeast quarter of section 8 and the southwest quarter of the northwest quarter and the lot numbered 2 of section 9, in township 47 north, of range 1 east, in the district of lands subject to sale at Marquette, Michigan, containing one hundred and fifty-five acres and sixty-hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said minor heirs of Edward Bernier, deceased:

Now, know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted,
217 and by these presents do give and grant, unto the said minor heirs of Edward Bernier, deceased, and to their heirs the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said minor heirs of Edward Bernier, deceased, and to their heirs and assigns forever.

In witness whereof I, Rutherford B. Hayes, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-fifth day of April, in the year of our Lord one thousand eight hundred

and seventy-seven, and of the Independence of the United States the one hundred and first.

By the President:

R. B. HAYES,
By D. D. CONE, *Secretary.*

[SEAL.]

S. W. CLARK,
Recorder of the General Land Office.

Recorded, vol. 17, page 298.

(Endorsed on back:) 10054. Minor heirs of E. Bernier, deceased. Received for record this 5th day of June, 1877, and recorded *on* Liber 6 of Deeds, folio 212.

GEO. W. BROWN,
Deputy Register of Deeds. [SEAL.]

Entered on receiving book. Fees, .75.

PLAINTIFFS' EXHIBIT C.

Memorandum of an agreement, made and entered into by
218 and between George Bernier and the heirs of age of Edward Bernier, deceased. Witnesseth, that said George agrees to take charge of all the property, real and personal, belonging to said estate, and work the land and use the personal property and support the minor children and furnish the said children with suitable clothing, and pay the taxes on the land and return the estate and personal property in as good condition as it now is, natural wear and tear excepted, and not to be responsible for the loss of any of the personal property, unless the result of negligence on his part.

(Signed) G. E. BERNIER,
LOUIS BERNIER,
C. D. BERNIER,
S. J. BERNIER,
MARY BERNIER,
his
WILLIAM x BERNIER.
mark.

Sault, March 11, 1879.

(Endorsed:) Filed March 19, A. D. 1888. G. L. Trempe, deputy register.

PLAINTIFFS' EXHIBIT D.

This indenture, made the (4th) fourth day of June, in the year of our Lord, one thousand eight hundred and eighty-seven, between Hoel Rains and Elizabeth Rains, his wife, of Sault Ste. Marie, Chippewa county, Michigan, of the first part, and William Bernier, Calixte D. Bernier, Louis G. Bernier, George E. Bernier and Samuel F. Bernier, of Chippewa county, Michigan.

219 Witnesseth, that the said parties of the first part, for and in consideration of the sum of ten thousand dollars, to them in

hand paid by the said parties of the second part, the receipt of which is hereby confessed and acknowledged, do by these presents grant, bargain, sell, remise, release and forever quitclaim unto the said parties of the second part, and to their heirs and *and* assigns forever, all that certain piece or parcel of land, situated in the village of Sault Ste. Marie, in Chippewa county, and State of Michigan, known and described as follows: The east fractional half of the northeast quarter of section 8, and the southwest quarter of the northwest quarter of section 9, excepting therefrom the east 30 acres thereof heretofore sold to Helen C. Brown, all in township 47 north, range 1 east.

The above lands being the same heretofore deeded to me by the said parties of the second part hereto, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; to have and to hold the said premises to the said parties of the second part, and to their heirs and assigns, to the sole and only proper use, benefit and behoof of the said parties of the second part, heirs and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

HOEL D. RAINS, [L. S.]
ELIZABETH RAINS. [L. S.]

Signed, sealed, and delivered in presence of—

EMILY LAMBERT.
E. J. PINK.

220 STATE OF MICHIGAN, } *ss:*
County of Chippewa, }

On this tenth day of June, in the year one thousand eight hundred and eighty-seven, before me, the subscriber, a notary public in and for said county, personally appeared Hoel D. Rains and Elizabeth Rains, his wife, to me known to be the same persons described in and who executed the within instrument, who each acknowledged the same to be their free act and deed.

E. J. PINK,
Notary Public.

PLAINTIFFS' EXHIBIT E.

In the Matter of the Estate of EDWARD BERNIER, Deceased.

STATE OF MICHIGAN, } *ss:*
Chippewa County, }

To Oliver Robbins, judge of probate for said county:

The undersigned would most respectfully petition and pray that Louis Bernier, of said county and one of the heirs-at-law of the late

Edward Bernier, be appointed by this honorable court administrator of the estate of the said Edward Bernier, deceased.

his
WILLIAM x BERNIER.
mark.
C. D. BERNIER.
GEORGE BERNIER,
Per G. W. B.
MARY C. BERNIER.
SAM'L T. BERNIER.

(Endorsed: Judge probate, Bernier petition.)

221 PLAINTIFFS' EXHIBIT F.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

Probate court of said county to Oliver Robbins, judge of probate for said county.

In the matter of the estate of Edward Bernier, deceased, minors, your petitioner would respectfully represent to the court that he is the oldest brother of said minors and their names and ages are as follows: Edward Bernier, 19 years; Alfred Bernier, 17 years; Matilda Bernier, 15 years; Joseph Bernier, 13 years; that said minors are now inhabitants of or residents in said county and are possessed of real and personal estate situate and being in said county, and that the entire value of the personal estate is the sum of — dollars and of the real estate the sum of — dollars or thereabouts, as your petitioner is informed and believes.

Your petitioner further represents that the names and *residents* of the parents (both deceased) and next of kin of said minors and other persons interested in said estate are as follows: William Bernier, Corlis Bernier, Louis Bernier, Mary Bernier, Louis P. Trempe, Andrew Blank, M. W. Scranton, A. M. Chadwick, Guy H. Carleton, all of the township of Sault Ste. Marie, in said county. Your petitioner further shows that for the reasons herein stated it is necessary that a guardian of the person and estate of said minors be appointed to have the custody of said minors and the care of their education and the care and management of their estate.

222 Your petitioner therefore prays that a day be fixed for hearing this petition and that due notice thereof be personally served upon the persons interested as aforesaid, and that Louis Bernier or some other suitable person may be appointed guardian of the person and estate of said minors, according to the provisions of the statute in such case made and provided.

LOUIS BERNIER.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

The above-named petitioner, being duly sworn, says that he has heard read the foregoing petition signed by him and knows the

contents thereof, and that the same is true of his own knowledge except as to the matter- therein stated to be on his information and belief, and as to these matters he believes them to be true.

LOUIS BERNIER.

Subscribed and sworn to before me this — day of October, A. D. 1877.

PLAINTIFFS' EXHIBIT G.

This indenture, made the third day of January, in the year of our Lord, one thousand eight hundred and eighty-eight, between Henry H. Aplin, auditor general of the State of Michigan, of the first part, and estate of Edward Bernier, of Sault Ste. Marie, Michigan, of the second part, witnesseth: That whereas, at a sale made by the treasurer of the county of Chippewa, in said State of Michigan, at the county seat thereof, in accordance with the provisions of law, and under the direction of the said auditor general, of land situated in said
223 county, which were returned to the office of said auditor general for delinquent taxes for the year 1883, and which taxes, with the interest and charges thereon, remain unpaid, the said party of the second part did become the purchaser at such sale, on the sixth day of October, A. D. 1885, of the following-described lands, situated in said county of Chippewa, to wit: Northwest quarter of northwest quarter section 13, containing forty acres, more or less; lot 1, section 13, containing twenty-six acres and ninety one-hundredths of an acre, more or less, both in town. 46, north of range 1 east. That part of Island No. 3, in section 16, town. 47, north of range 1 east, containing seven acres and sixty-hundredths of an acre, more or less, part of private land claim twenty-eight, being a parcel off the northwest corner fronting on Portage street thirty-three feet, and extending south with that width along the west line of said claim one hundred and sixty-six feet, section 6, in the village of Sault Ste. Marie, according to the plat thereof. East half of northeast quarter section 8, containing eighty acres, more or less, in town. 47, north of range 1 east, in the village of Sault Ste. Marie, according to the plat thereof; and

Whereas, the said party of the second part has paid the amount of the purchase-money for the same, to wit: The sum of nineteen dollars and seventy-eight cents to the treasurer of said county, and obtained his certificate of said purchase according to law; and

Whereas, the said land has not been redeemed as the law provides, and the said party of the second part has presented and surrendered to the said auditor general the certificate of purchase aforesaid;

224 Now, therefore, this indenture witnesseth: That the said Henry H. Aplin, auditor general of the said State of Michigan, in the name of the people of said State, and by virtue of the authority vested in him by the laws thereof, in consideration of the premises, and of the sum aforesaid, paid by the said party of the second part, as above mentioned, the receipt whereof is hereby con-

fessed, has granted, bargained, sold, and conveyed, and by these presents, does grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns forever, the premises above described with all and singular the rights, privileges, hereditaments, and appurtenances to the same, belonging or in anywise appertaining; to have and to hold the same unto the said party of the second part, his heirs and assigns, forever.

In testimony whereof, the said Henry H. Aplin, auditor general, as aforesaid, has hereunto set his hand and seal, the day and year first above written.

HENRY H. APLIN, [L. S.]
Auditor General of the State of Michigan.

Signed, sealed, and delivered in presence of—
L. A. BAKER.
EDITH E. DAGNE.

STATE OF MICHIGAN, } ss:
County of Ingham, }

On this third day of January, A. D. 1888, before me, a notary public in and for said county, personally came the above-named Henry H. Aplin, auditor general of said State, known to me
225 to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

M. B. CARPENTER,
Notary Public, Ingham County, Michigan.

PLAINTIFFS' EXHIBIT H.

This indenture, made the third day of January, in the year of our Lord, one thousand eight hundred and eighty-eight, between Henry H. Aplin, auditor general of the State of Michigan, of the first part, and estate of Edward Bernier, of Sault Ste. Marie, Michigan, of the second part, witnesseth: That whereas, at a sale made by the treasurer of the county of Chippewa, in said State of Michigan, at the county-seat thereof, in accordance with the provisions of law, and under the direction of the said auditor general, of lands situated in said county, which were returned to the office of said auditor general for delinquent taxes for the year 1882, and which taxes, with the interest and charges thereon, remain unpaid, the said party of the second part did become the purchaser at such sale, on the sixth day of October, A. D. 1885, of the following-described lands, situated in said county of Chippewa, to wit: Northwest quarter of northwest quarter section 13, containing forty acres, more or less; and lot 1, section 13, containing twenty-six acres and ninety one-hundredths of an acre, more or less, both in town. 46, north of range 1 east; south half of northeast quarter section 12, containing eighty acres, more or less, and that part of Island No. 3, lying in section 16, containing seven acres and sixty-hundredths of an acre, more or
226 less, both in town. 47, north of range 1 east; a parcel of northwest corner of private claim twenty-eight, fronting thirty-

three feet on Portage street, extending south of that width along west side of claim one hundred and sixty feet; private claim twenty-eight, section 6, in the village of Sault Ste. Marie, according to the plat thereof.

Whereas, the said party of the second part has paid the amount of the purchase-money for the same, to wit: The sum of thirty-three dollars and ninety-eight cents to the treasurer of said county and obtained his certificate of said purchase according to law; and

Whereas, the said land has not been redeemed as the law provides, and the said party of the second part has presented and surrendered to the said auditor general the certificate of purchase aforesaid;

Now, therefore, this indenture witnesseth: That the said Henry H. Aplin, auditor general of the said State of Michigan, in the name of the people of said State, and by virtue of the authority vested in him by the laws thereof, in consideration of the premises, and of the sum aforesaid, paid by the said party of the second part, as above mentioned, the receipt whereof is hereby confessed, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns forever, the premises above described with all and singular the rights, privileges, hereditaments, and appurtenances to the same, belonging or in anywise appertaining; to have and
227 to hold the same unto the said party of the second part, his heirs and assigns, forever.

In testimony whereof the said Henry H. Aplin, auditor general as aforesaid, has hereunto set his hand and seal, the day and year first above written.

HENRY H. APLIN, [L. S.]
Auditor General of the State of Michigan.

Signed, sealed, and delivered in presence of
L. A. BAKER,
EDITH E. DAGNE.

STATE OF MICHIGAN, } ss:
County of Ingham, }

On this third day of January, A. D. 1888, before me, a notary public in and for said county, personally came the above-named Henry H. Aplin, auditor general of said State, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

M. B. CARPENTER,
Notary Public, Ingham County, Michigan.

PLAINTIFFS' EXHIBIT I.

This indenture, made this 19th day of April, in the year of our Lord one thousand eight hundred and eighty-six, between Samuel Bernier and Victoria Bernier, his wife, of Chippewa county, Michigan, of the first part, and Helen C. Brown, of the same place, of the

second part, witnesseth: That the said parties of the first part,
228 for and in consideration of the sum of one hundred dollars, and having previously agreed so to do, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents, grant, bargain, sell, remise, release, alien, and confirm unto the said party of the second part, and her heirs and assigns, forever, all that certain piece or parcel of land situate and being in the village of Sault Ste. Marie, county of Chippewa, and said State of Michigan, and described as follows, to wit:

Lot number two (2) in the southeast quarter of the northwest quarter of section nine (9). Also, the east thirty acres of southwest quarter of northwest quarter of said section nine (9), all in town. forty-seven north of range one east, in said county and State.

This deed is given for the reason that I heretofore agreed to convey the above-described land on demand; and because my father, Edward Bernier, in his lifetime agreed to convey the same to Mrs. Helen C. Brown.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said premises, as above described, with the appurtenances, unto the said part- of the second part, and to her heirs and assigns forever. And the said parties of the first part, their heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said party of the second part, her heirs and assigns, that at the time of the ensealing and delivery of these presents they are well seized of the above-granted premises in fee simple;
229 that they are free from all incumbrances whatever, and that they will, and their heirs, executors and administrators shall warrant and defend the same against all lawful claims whatsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

SAMUEL T. BERNIER. [L. S.]
VICTORIA M. BERNIER. [L. S.]

Sealed and delivered in presence of—

WM. McMAHON.
LOUIS BERNIER.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

On this twenty-eighth (28th) day of April, in the year one thousand eight hundred and eighty-six, before me, a notary public in and for said county, personally appeared Samuel T. Bernier and Victoria Bernier, his wife, to me known to be the same persons described in and who executed the within instrument, who each acknowledged the same to be their own free act and deed.

S. T. BERNIER,
Notary Public, Chippewa County, Michigan.

Samuel F. Bernier and wife
to
Helen C. Brown.

Received for record the sixth day of May, A. D. 1886, at 2 o'clock p. m., and recorded in Liber 18 of Deeds, on page 270.

GEO. W. BROWN, *Register.*

230 PLAINTIFFS' EXHIBIT J.

This indenture, made this 19th day of April, in the year of our Lord one thousand eight hundred and eighty-six, between Samuel Bernier and Victoria Bernier, his wife, of Chippewa county, Michigan, of the first part, and Helen C. Brown, of the same place, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one hundred dollars, and having previously agreed so to do, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents, grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and her heirs and assigns, forever, all that certain piece or parcel of land situate and being in the village of Sault Ste. Marie, county of Chippewa, and said State of Michigan, and described as follows, to wit:

Lot number two (2) in the southeast quarter of the northwest quarter of section nine (9). Also, the east thirty acres of southwest quarter of northwest quarter of said section nine (9), all in town. forty-seven north of range one east, in said county and State.

This deed is given for the reason that I heretofore agreed to convey the above-described land on demand; and because my father, Edward Bernier, in his lifetime agreed to convey the same to Mrs. Helen C. Brown.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said premises, as above described, with the
231 appurtenances, unto the said party of the second part, and to her heirs and assigns forever. And the said parties of the first part, their heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said party of the second part, her heirs and assigns, that at the time of the ensealing and delivery of these presents they are well seized of the above-granted premises in fee simple; that they are free from all incumbrances whatever, and that they will, and their heirs, executors and administrators shall warrant and defend the same against all lawful claims whatsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

SAMUEL F. BERNIER. [L. S.]
VICTORIA M. BERNIER. [L. S.]

Sealed and delivered in presence of—
WM. McMAHON.
JOHN CLARKE.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

On this second day of June, in the year one thousand eight hundred and eighty-six, before me, a notary public in and for said county, personally appeared Samuel F. Bernier and Victoria Bernier, his wife, to me known to be the same persons described in and who executed the within instrument, who each acknowledged the same to be their free act and deed.

JOHN CLARKE,
Notary Public, Chippewa County, Michigan.

232 Samuel F. Bernier and wife
to
Helen C. Brown.

Received for record the ninth day of June, A. D. 1886, at 9 o'clock a. m., and recorded in Liber 18 of Deeds, on page 300.

GEO. W. BROWN, *Register.*

PLAINTIFFS' EXHIBIT K.

This indenture, made this seventeenth day of April, in the year of our Lord one thousand eight hundred and eighty-six, between William Bernier and Charlotte Bernier, George E. Bernier and Louis G. Bernier, of Chippewa county, Michigan, of the first part, and Helen C. Brown, of the same place, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of two hundred dollars, and having heretofore agreed to deed for a valuable consideration to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and her heirs and assigns, forever, all those certain pieces or parcels of land situate and being in the village of Sault Ste. Marie, county of Chippewa, State of Michigan, and described as follows, to wit:

Lot No. two (2), in the northwest quarter of section nine (9); also the east thirty acres of the southwest quarter of the northwest quarter of the said section nine (9), all in township forty-seven, north of range one east.

233 Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining: To have and to hold the said premises, as above described, with the appurtenances, unto the said party of the second part, and to her heirs and assigns forever. And the said parties of the first part, their heirs, executors and administrators, do covenant, grant, bargain and agree to — with the said part- of the second part, her heirs and assigns, that at the time of the ensealing and delivery of these presents, they are well seized of the above-granted premises in fee simple; that they are free from all incumbrances whatever, and that they will, and their heirs, executors, and administrators shall warrant and defend the same against all lawful claims whatsoever.

In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

WILLIAM his x mark. BERNIER. [L. S.]
CHARLOTTE her x mark. BERNIER. [L. S.]
G. E. BERNIER. [L. S.]
LOUIS G. BERNIER. [L. S.]

Sealed and delivered in presence of—
JAMES T. MOORE.
JOHN DRUGER.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

On this 17th day of April, in the year one thousand eight
234 hundred and eighty-six, before me, James T. Moore, a notary public in and for said county, personally appeared William Bernier and Charlotte Bernier, his wife; George E. Bernier and Louis G. Bernier, to me known to be the same persons described in and who executed the within instrument, who each acknowledged the same to be their free act and deed.

JAMES T. MOORE,
Notary Public.

Wm. Bernier and wife, George E. Bernier, and Louis G. Bernier
to
Helen C. Brown.

Received for record the 30th day of April, A. D. 1886, at 4 o'clock p. m. and recorded in Liber 18 of Deeds, on page 362.

GEO. W. BROWN, *Register.*

PLAINTIFFS' EXHIBIT L.

This indenture, made the third day of December, A. D. 1885, between Alfred Bernier, now of Cleveland, Ohio, an heir-at-law of Edward Bernier, late of the county of Chippewa, deceased, of the first part and John H. Goff, of the village of Sault Ste. Marie, Chippewa county, and the State of Michigan, party of the second part, witnesseth, that the said party of the first part (unmarried) for and in consideration of the sum of three hundred and fifty dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part and to his heirs and assigns forever, all the right, title, interest and estate of the party of the first part of, in and to all those tracts or parcels of land, situ-
235 ate in the county of Chippewa and State of Michigan, and described as follows, to wit: The east half of the northeast

quarter of section eight (8), in township forty-seven (47) north, of range one east. The south half of the northeast quarter of section twelve (12), in township forty-seven (47) north, of range one east, and that part of island in northeast quarter of the northeast quarter of section sixteen (16), in township forty-seven (47) north, of range one (1) east, containing seven and $\frac{60}{100}$ acres, according to the returns of the surveyor general. Also all that other tract or parcel of land, situate in the village of Sault Ste. Marie, in said county, known and described as a part of private land claim No. 41, lying between Portage street and Ridge street and bounded and described as follows, viz: Beginning at a point in the north side of Ridge street, fifty (50) feet from the southeast corner of said claim, and running thence northerly along the west line of a lot of land sold to Alexander Cadotte, being fifty feet on Ridge street and extending northerly the same width one-half way across the claim to Portage street one-half the distance to Portage street; thence westerly one hundred and ten (110) feet, on a line parallel with Portage street; thence southerly parallel with the first line to the north side of Ridge street; thence easterly along the north side of Ridge street one hundred and ten feet to the place of beginning. Also all that other tract or parcel of land, situate in said village, and described as commencing at the northeast corner of a lot lately owned and occupied by Oliver Boisvert on the south side of Portage street, and running thence
easterly along the south side of Portage street thirty-
236 three (33) feet; thence southerly one hundred and sixty-three (163) feet; thence westerly thirty-three (33) feet to the east line of Oliver Boisvert's lot aforesaid; thence northerly along said Boisvert's east line one hundred and sixty-three feet to Portage street, the place of beginning, being the same land conveyed to Eugene Roe by Francis Sobraro, by deed dated January 12, 1852, recorded in Chippewa county register's office, in Book B of Deeds, at pages 268, 269 and 270. Also all that other tract or parcel of land in said village, described as commencing at a point five feet east from the northwest corner of private land claim No. twenty-seven (27); running thence east along the south line of Portage street, in the village of Sault Ste. Marie, forty-two feet; thence south parallel with the west line of said claim 27 one hundred and seventy-two feet; and thence west forty-two feet, and thence north one hundred and seventy-two feet to Portage street, the place of beginning. Also all that other tract or parcel of land situate in said county and described as lot one (1) of section thirteen (13) and the northwest quarter of the northwest quarter of section thirteen (13), in town. forty-six (46) north, of range one (1) east. Also the northwest quarter of the southeast quarter of section thirteen (13), in town. forty-seven (47) north, of range one (1) west. Also all my right, title, interest and estate in and to all lands in said county of Chippewa, of which the said Edward Bernier, deceased, died, seized, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said
above-described premises to the said party of the second part
237 and to his heirs and assigns forever, to the sole and only

proper use, benefit and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

ALFRED BERNIER. [L. S.]

Signed, sealed, and delivered in presence of—
HORACE M. OREN.
J. B. EDDY.

STATE OF MICHIGAN, *County of Chippewa,* } ss:

On this third day of December, A. D. 1885, before me, a notary public in and for said county, personally came the above-named Alfred Bernier, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

HORACE M. OREN,
Notary Public in and for Chippewa County, Michigan.

PLAINTIFFS' EXHIBIT M.

This indenture, made the 20th day of February, in the year of our Lord one thousand eight hundred and eighty-six, between Alfred Bernier (unmarried), of the city of Cleveland, Ohio, formerly a minor heir-at-law of Edward Bernier, deceased, now of full age and unmarried, of the first part, and John H. Goff, of the village of Sault Ste. Marie, Chippewa county, Mich., of the second part, witnesseth:

238 That the said party of the first part, for and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns, forever, all that certain piece or parcel of land situated in the village of Sault Ste. Marie, in Chippewa county, and State of Michigan, known and described as follows: The west half of the west half of the southwest quarter of the northwest quarter of section nine (9), in township forty-seven (47), north of range one (1) east.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said above-described premises to the said party of the second part, and to his heirs and assigns, to the sole and only proper use, benefit and behoof of the said parties of the second part, heirs and assigns, forever.

In witness whereof, the said par*ties* of the first part ha*ve* hereunto set his hand and seal, the day and year first above written.

ALFRED BERNIER. [L. S.]

Signed, sealed, and delivered in presence of—
HAMILTON ROOSA,
J. M. BLISS.

STATE OF OHIO, } ss:
Cuyahoga County, }

On this 15th day of April, in the year one thousand eight
239 hundred and eighty-six, before me, the subscriber, a notary public in and for said county, personally appeared Alfred Bernier, to me known to be the same person described in and who executed the within instrument, who acknowledged the same to be his free act and deed.

HAMILTON ROOSA,
[SEAL.] *Notary Public.*

STATE OF OHIO, } ss:
Cuyahoga County, }

I, Henry W. Kitchen, clerk of the court of common pleas, a court of record of Cuyahoga county aforesaid, do hereby certify that Hamilton Roosa, before whom the annexed acknowledgement was taken, was at the date thereof a notary public in and for said county, duly authorized by the laws of Ohio to take the same; that I am well acquainted with his handwriting and believe his signature thereto is genuine, and that the annexed instrument is executed and acknowledged according to the laws of the State of Ohio.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at Cleveland, this 15th day of April, A. D. 1886.

[SEAL.] HENRY W. KITCHEN, *Clerk.*

240 PLAINTIFFS' EXHIBITS.

Page 5.—Assessment-roll for the township of Sault Ste. Marie, in the county of Chippewa, for the year 1878:

Bernier, Edward, estate of—

	Sec.	Town.	Range.	Acres.	Total of taxes.
E. ½ of N. E. ¼	8	47	1 E.	80	$1.95, paid.
S. W. ¼ N. W. ¼	"	"	"	40	.98, paid.
Lot No. 2	"	"	"	35.60	.99, paid.
Personal property					3.90, paid.

Page 10—Roll 1870:

Bernier, Edward, estate of—

	Sec.	Town.	Range.	Acres.	Total of taxes.
E. ½ of N. E. ¼	8	47	1 E.	80	$2.20, paid.
S. W. ¼ N. W. ¼	9	"	"	40	1.32, see Brown.
Taxed twice, lot 2	9	"	"	35.60	1.32, del.
Brown, 30 acres personal property					2.20. paid.

(In lead pencil.)

Page 60—Roll 1880:

Bernier, Edward, estate of—

	Sec.	Town.	Range.	Acres.	Total of taxes.
E. ½ of N. E. ¼	8	47	1 E.	80	$3.10, paid Jan. 28.
Personal property					1.55

Tax-roll 1881:

Bernier, Edward, estate of—

	Sec.	Town.	Range.	Acres.	Total of taxes.
E. ½ of N. E. ¼	8	47	1 E.	80	$3.76, ret.

241 Page 45—Assessment-roll 1882:

Bernier, Edward, estate of—

	Sec.	Town.	Range.	Acres.	Total of taxes.
E. ½ N. E. ¼	8	47	1 E.	----	$4.95, del.

Page 12—Assessment-roll, village of Sault Ste. Marie, year 1883

Bernier, Edward, estate of—

	Sec.	Town.	Range.	Acres.	Total of taxes.
E. ½ of N. E. ¼	8	47	1 E.	80	$3.75.

Page 6—Assessment-roll 1884:

Bernier, Edward, estate of—

	Sec.	Town.	Range.	Acres.	Total of taxes.
E. ½ of N. E. ¼	8	47	1 E.	----	$9.68, ret'd paid.

Assessment-roll 1885.

Bernier, Edward, estate of—

	Sec.	Town.	Range.	Acres.	Total of taxes.
E. ½ of N. E. ¼	8	47	1 E.	----	$14.24, ret'd delq.

PLAINTIFFS' EXHIBITS—PROBATE JOURNAL.

In the Matter of the Estate of EDWARD BERNIER, Deceased.

STATE OF MICHIGAN, *Chippewa County,* } ss:

PROBATE COURT, *March* 20, 1877.

Hon. Oliver Robbins, judge of probate.

Whereas Edward Burnier, of said county, died intestate on or about the 17th day of June, A. D. 1876, and left in his own right several descriptions of real estate in said county; therefore,
242 on reading and filing the petition of William Burnier, Collis Burnier, George Burnier, Mary C. Burnier, and Samuel F. Burnier, praying for the appointment of Louis Burnier as administrator of the said Edward Burnier, deceased, on motion of George

W. Brown, attorney for the said heirs-at-law of the said Edward Burnier, deceased, ordered that Monday, April 30th, 1877, be, and the same is hereby, appointed and fixed by this honorable court for the appointment of an administrator of said estate, and that this order be published at least three successive weeks in the Cheboygan Free Press prior to the said 30th day of April, there being no newspaper printed in the said county of Chippewa, and the said Free Press being the nearest published paper to said county of Chippewa and circulated therein.

O. ROBBINS,
Judge of Probate.

Proof of Publication.

STATE OF MICHIGAN, } ss:
County of Cheboygan, }

Thomas Bently, one of the publishers of the Cheboygan Free Press, a paper published and circulating in the county of Cheboygan and Chippewa, being duly sworn, deposes and says that the annexed notice has been duly published in said paper at least once in each week for three successive weeks, and that the first publication thereof was on the 29th day of March, A. D. 1877, and the last on the 26th day of April, A. D. 1877.

THOMAS BENTLY.

243 Sworn and subscribed before me this 27th day of March, A. D. 1877.

JAMES J. BROWN,
Notary Public, Cheboygan County, Mich.

Probate Notice.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

At a session of the probate court for the county of Chippewa holden at the probate office, in the village of Sault Ste. Marie, on Tuesday, the 26th day of March, in the year one thousand eight hundred and seventy-seven.

Present: O. Robbins, judge of probate.

In the Matter of the Estate of EDWARD BRUNIER, Deceased.

On reading and filing the petition, duly verified, of the heirs-at-law of Edward Brunier, deceased, for the appointment of Louis Brunier as administrator of the said estate, on motion of George W. Brown, attorney for the said heirs—

It is ordered that Monday, the 30th day of April, in the year one thousand eight hundred and seventy-seven, at 10 o'clock in the forenoon, be assigned for the hearing of said petition, and that the heirs-at-law of said deceased and all other persons interested in said estate are required to appear at a session of said court then to be

holden at the probate office, in the village of Sault Ste. Marie, and show cause, if any there be, why the prayer of the petitioner should not be granted; and it is further ordered that said petitioner give notice to the persons interested in said estate of the pendency
244 of said petition and the hearing thereof by causing a copy of this order to be published in the Cheboygan Free Press, a newspaper circulated in said county of Chippewa, for three successive weeks previous to said day of hearing.

(A true copy.)

O. ROBBINS,
Judge of Probate.

GEORGE W. BROWN,
Attorney for Estate.

Sault Ste. Marie, March 26, 1877.

In the Matter of the Estate of EDWARD BURNIER.

APRIL 30TH, 1877.

Present: Judge Oliver Robbins, judge of probate.

On reading and filing affidavit and proof of due publication of an order for all interested in said estate to appear and show cause why the said Louis Burnier should not be appointed administrator of said estate, and after hearing the testimony of said Louis Burnier that he is one of the heirs-at-law of said Edward Bernier, deceased, also that he did apply to this court for the appointment of administrator of the estate aforesaid, also that the following-named persons are the only legal heirs of the said Edward Burnier, deceased, to wit:

William	Burnier,	aged about	thirty years (30);
Collis	"	"	twenty-nine (29);
Louis	"	"	twenty-seven (27);
George	"	"	twenty-five (25);
Samuel F.	"	"	twenty-three (23);
Mary	"	"	twenty-one (21);
Edward, Jr.,	"	"	nineteen (19);
Alfred	"	"	seventeen (17);
Matilda	"	"	fifteen (15);

Joseph Burnier, aged about thirteen (13),

245 And that the above-named children are all the children of Edward Burnier aforesaid and the only legal heirs to the said estate, also the testimony of Louis P. Trempe to the same effect, and *that* there being no opposition thereto, I do hereby appoint Louis Burnier administrator of the said estate.

OLIVER ROBBINS,
Judge of Probate.

And it is further ordered that Myron W. Scranton and Thomas R. Esterday, of said county, be, and they are hereby, appointed to appraise the estate of the said Edward Bernier, deceased.

June 26th, 1877.

——— ———,
Judge of Probate.

And it is further ordered that six months from the 30th day of April be allowed for creditors to present their claims against said estate for examination and allowance, and that all persons having claims or demands be required to present the same to this court, at the probate office for said county, on or before the 30th day of October next, at 10 o'clock in the forenoon of that day, for examination and allowance.

OLIVER ROBBINS,
Judge of Probate.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

In the Probate Court for said County.

In the Matter of the Estate of EDWARD BERNIER, Deceased.

A petition having been duly presented to and filed with
246 this court on the 4th day of October, A. D. 1877, by Louis Burnier, the administrator of said estate, praying for the appointment of a guardian for the minor heirs of said deceased, residing in said county, to wit, Edward Burnier, aged 19 years; Alfred Bernier, aged 17 years; Matilda Bernier, aged 15 years, and Joseph Bernier, aged 13 years:

It is therefore ordered that Monday, the 22d day of October instant, be fixed for hearing and considering the prayer of the said petitioner at 10 o'clock in the forenoon of that day.

Dated October 6th, 1877.

OLIVER ROBBINS,
Judge of Probate.

At a session of the probate court of the county of Chippewa held at the office of the judge of probate, in the village of Sault Ste. Marie, in said county, on Monday, the 22d day of October, A. D. 1877.

Present: O. Robbins, judge of probate.

In the Matter of the Estate of EDWARD BERNIER, Deceased.

This day having been assigned for hearing and considering the application of Louis Bernier, the administrator of the estate of said deceased, asking that he, the said Louis Bernier, might be appointed guardian of the following-named minor heirs of said deceased, viz., Edward Bernier, aged 19 years; Alfred Bernier, aged 17 years; Matilda Bernier, aged 15 years, and Joseph Bernier, aged 13 years—

The said minor heirs having given their consent to such appointment, and proof of the service of notice on the major heirs of
247 said deceased and upon other persons interested in the settlement of said estate, as required by statute, of the time and place — hearing such application having been furnished, and there being no opposition to the granting of the prayer of said petition or application—

It is ordered that the said Louis Bernier be, and he is hereby, appointed guardian of the said minor heirs, and he is hereby author-

ized and empowered to do and perform all and singular the trusts reposed in him by virtue of said appointment, according to the provisions of the statute in such case made.

O. ROBBINS,
Judge of Probate.

At a session of the probate court for the county of Chippewa held at the office of the probate judge, in the village of Sault Ste. Marie, in said county, October 31, 1877.

Present: O. Robbins, judge of probate.

In the Matter of the Estate of EDWARD BERNIER, Deceased.

This day having been assigned for receiving and considering claims against the said estate—

On motion of George W. Brown, Esq., attorney for said estate, it is for good and sufficient reasons ordered that the hearing of said claims be postponed until the 7th day of November, A. D. 1877, at 10 o'clock in the forenoon of that day.

O. ROBBINS,
Judge of Probate.

248 For Defendants' Exhibit No. 1, original patent, see Pl't'ffs' Exhibit B, which is copy of patent.

DEFENDANTS' EXHIBIT 2.

(Two) 2 horses	$120 00
(One) 1 double wagon	15 00
(One) 1 mowing machine	50 00
(One) 1 harrow	15 00
(One) 1 city buss box	5 00
(One) 1 double *slay*	13 00
(One) 1 dray	22 00
(One) 1 dray harness	4 25
(One) 1 post auger	1 00
(One) 1 grindstone	1 00
(One) 1 ax	50
(One) 1 buck saw	75
(Two) 2 plows	7 00
(One) 1 cross-cut saw	
(One) 1 hay rake	1 00
(One) 1 cutter	8 00
(Two) 2 cows	45 00
(One) 1 heifer	10 00
(One) 1 hay press	5 00
(One) 1 hay fork	25
(One) 1 single wagon	25 00
(Three) 3 harnesses	1 50
(One) 1 hay knife	25
	$350 50

Valued by T. R. Easterday, Esqr., and M. W. Scranton, Esqr.; eventory of estate return- from Louis Bernier, administrator, to George E. Bernier; March 11, 1879.
Sault, Mich.

249 DEFENDANTS' EXHIBIT 3.

Louis Bernier in acc't with the estate of Edward Bernier, deceased,
Dr.

1878.		
July 1. To amount paid by Lambert		$800 00
" " " "		230 24
" " " Chr. King		6 70
		$1,036 94

By amount paid to following-named persons:

Myron W. Scranton	$78 50
Plummer & Marks	18 88
Guy H. Carleton	6 00
Peter Quean	289 40
Oran B. Lyon	15 00
A. M. Chadwick	20 00
Dr. Kelley	50 00
Thos. McKnight, on land mortgage	15 00
Paid on Antoine Paul note	10 00
Paid Brown, attorney	100 00
Blank & Peck (mortgage)	350 00
	$952 78
Balance due the estate	$84 16
To amount paid on land first homesteaded and then paid for	$90 00

G. W. Brown can explain—

Balance to Louis	$5 84
Paid taxes, 1879	20 20
Paid for provisions — supplies, balance	36 80
	$62 84

250 Balance due Louis Bernier:

To — for sale of mare	$62 84	$10 00
By stone house bill	14 35	
By amount paid aunt	25 00	
	$102 19	
To amount charged as taxes and supplies		57 00
		$67 00

Balance due Louis	$35 19	
Also amount of note	100 00	Calixte.
	$135 19	

We, the heirs of the estate of Edward Bernier, agree that the above amount is due Louis Burnier in the settlement of all the matters as administrator of said estate to date, March 11, 1879.

G. E. BERNIER.
SAM. F. BERNIER.
C. D. BERNIER.
LOUIS BERNIER.
MARY BERNIER.
his
WILLIAM x BERNIER.
mark.

DEFENDANTS' EXHIBIT 4.

Memorandum of agreement, made and entered into this 22nd day of January, A. D. 1878, by and between Louis Burnier, administrator of the estate of Edward Bernier, deceased, of the first part, and Margaret A. Lambert, of Sault Ste. Marie, of the second part, witnesseth, that whereas the said Berneir was duly ap-
251 pointed administrator of the said estate, and whereas the judge of probate for the county of Chippewa did on the 20th day of December, A. D. 1877, issue an order, authorizing the said administrator, on the 8th day of February, A. D. 1878, to sell to the highest bidder certain lands and tenements belonging to the said estate to enable him to pay up the debts of the said estate, among which was private land claims in the village of Sault Ste. Marie, known as private claims number eighty-one, eighty-two. Now therefore, in consideration of the covenants and agreements on the part of said Mrs. Lambert, hereinafter stated, the said administrator agrees, that in case the said claims are bid off to the said Mrs. Margaret Lambert, he will make a good and sufficient deed of conveyance to her of the said claims, on the payment by her of the following sums of money, and the execution and delivery to him of a mortgage on said claims for the purpose of securing the payments as hereinafter stated, to wit: Eight hundred dollars down or at the time of sale, two hundred dollars and interest on one thousand dollars on or before the first day of October, A. D. 1878, and two hundred dollars and interest on all unpaid sums annually thereafter, until the whole sum of eighteen hundred dollars shall be paid, and the said party of the second part hereby expressly agrees to bid eighteen hundred dollars for said claims at the time of sale, in case the said property is bid off to her and to make and execute a mortgage on the same to secure the payment of the balance of said eighteen hundred dollars at the times and in the manner above mentioned.

252 In witness whereof the parties have hereunto set their hands and seals the day and year above written, to wit, the 22nd day of January, A. D. 1878.

LOUIS BERNIER, *Administrator.* [SEAL.]
MARGARET H. LAMBERT. [SEAL.]

Witness:
O. ROBBINS.

Received on this contract fifty dollars, to be applied in payment on same or returned. January 22nd, 1878.

LOUIS BERNIER,
Administrator,
Per GEO. W. BROWN.

DEFENDANTS' EXHIBIT 5.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

Probate Court for said County.

To Hon. Oliver Robbins, judge of probate for said county:

In the Matter of the Estate of EDWARD BERNIER, Deceased.

Your petitioner would respectfully represent to the court that on the 30th day of April, 1877, Louis Bernier was duly by said court appointed administrator of said Edward Bernier, deceased; that the personal estate of said Edward Bernier that has come into his hands — no moneys from the said estate.

253 Your petitioner represents that as far as can be ascertained by him and he is informed and verily believes the just debts outstanding against said Edward Bernier, deceased, amount to the sum of twenty-five hundred dollars, and that the charges and expenses of managing and administering said estate, including further and future probable charges and expenses, will amount to the sum of one hundred dollars.

Your petitioner further represents that it is necessary for the payments of said debts, charges, and expenses to raise the sum of twenty-six hundred dollars, or thereabouts, by the sale of the following-described real estate or some part thereof, of which the said Edward Bernier, deceased, was seized and possessed.

The description of condition of value of each parcel and of the whole of said real estate, according to the information and belief of your petitioner, *are* as follows, viz:

Private land claim- numbers one hundred and twenty-four, one hundred and twenty-five, and one twenty-six, and that the value of said land is the sum of fifteen hundred dollars, or thereabouts, as appraised, situate in the township of Sault Ste. Marie, county of Chippewa, Michigan.

Your petitioner further represents that the names and residences of the next of kin and heirs-at-law of said Edward Bernier, deceased,

and other persons interested are, as your petitioner is informed and believes, *are* as follows, viz:

William Bernier, 30 years; Collis Bernier, 29 years; Louis Bernier, 27 years; George Bernier, 25 years; Samuel Bernier, 23
254 years; Mary Bernier, 21 years; Edward Bernier, Jr., 19 years; Alfred Bernier, 17 years; Matilda Bernier, 15 years; Joseph Bernier, 13 years; and their residence is in the village of Sault Ste. Marie, Michigan.

Wherefore your petitioner prays that he may be authorized, empowered, and licensed to sell the whole of the real estate hereinbefore mentioned and described, with the hereditaments and appurtenances, or so much part thereof as the court shall deem necessary and most for the benefit of the persons interested, for the purpose of paying the debts, expenses, and charges aforesaid, according to the statute in such case made and provided.

Also your petitioner prays for the sale of private land claims number 80 and 82, in the village of Sault Ste. Marie, Chippewa county, Michigan.

LOUIS BERNIER.

STATE OF MICHIGAN, } *ss:*
County of Chippewa, }

The above-named petitioner, being duly sworn, says that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the same is true of his own knowledge and belief, and as to these matters he believes them to be true.

Subscribed and sworn to before me this 2d day of September, A. D. 1877.

E. S. B. SUTTON,
Notary Public, Chippewa County, Michigan.

255 (Endorsed on back:) (Defendants' Exhibit 5.) In the probate court for Chippewa county. In the matter of the estate of Edward Bernier, deceased. Petition to sell real estate. Filed this 3d day of October.

DEFENDANTS' EXHIBIT 6.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April* 25, 1887.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of the papers in the case of Marquette, Michigan, homestead application No. 915, commuted to cash No. 10054, are true and literal exemplifications of the original papers on file in this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

WM. A. J. SPARKS,
Commissioner of General Land Office.

No. 10054.

RECEIVER'S OFFICE AT MARQUETTE, MICH., *October* 23*d*, 1876.

Received from Samuel F. Bernier, of Chippewa county, Michigan, the sum of one hundred and ninety-four dollars and fifty
256 cents, being in full for the E. ½ of N. E. ¼ sec. 8, S. W. ¼ of N. W. ¼ and lot No. 2, quarter of section No. 9, in township No. 47 north, of range No. one east, containing one hundred and fifty-five acres and sixty-hundredths, at $1.25 per acre.

$194.50.

J. M. WILKINSON, *Receiver.*

Homestead entry No. 915, commuted under the 8th section of the act (written in red ink across face). Pat. delivered by I. R. & R. (across face). Rec't for homestead entry.

Marquette, Mich.

Patent delivered to George W. Brown June 1, 1877 (endorsed on back).

No. 10054.

LAND OFFICE AT MARQUETTE, MICH., *Oct.* 23, 1876.

It is hereby certified that in pursuance of law, for the benefit of the minor heirs of Edward Bernier, deceased, — residing at ——, in Chippewa county, State of Michigan, on this day purchased of the register of this office the E. ½ of N. E. ¼ sec. 8, S. W. ¼ of N. W. ¼ and lot No. 2 of section No. nine (9), in township No. 47 north, of range one (1) east, of the principal meridian, containing one hundred and fifty-five sixty one-hundredths acres, at the rate of
257 one dollar and twenty-five cents per acre, amounting to one hundred and ninety-four dollars and fifty cents, for which said minor heirs of Edward Bernier has made payment in full, as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said minor heirs of Edward Bernier shall be entitled to receive a patent for the lot alone described.

AMBROSE CAMPBELL, *Register.*

Commuted homestead entry No. 915 under the 8th section of the act (written in red ink across face). No. 10054 M. 57351 C. No. 2 cash certificate. Land office at Marquette, Michigan. Sec. 8 and 9, town. 47 north, range 1 east. Approved April 12, 1877. W. H. H. Patented April 25, 1877. Recorded vol. 17, page 298. J. H. Goff. April 6, 1887. 34241.

No. 10054.

LAND OFFICE AT MARQUETTE, MICH., *Oct.* 23, 1876.

It is hereby certified that, in pursuance of law, Samuel F. Bernier, residing at ——, in Chippewa county, State of Michigan, on this day purchased of the register of this office the E. ½ of N. E. ¼ sec. 8,

S. W. ¼ of N. W. ¼ and lot No. 2 of sec. No. nine (9), in town-
258 ship No. 47 north, of range No. 1 east, of the principal meridian, containing one hundred and fifty-five $\frac{60}{100}$ acres, at the rate of one dollar and twenty-five cents per acre, amounting to one hundred and ninety-four dollars and fifty cents, for which the said Samuel F. Bernier has made payment in full, as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Samuel F. Bernier shall be entitled to receive a patent for the lot above described.

AMBROSE CAMPBELL, *Register.*

(Across face:) Cancelled; new one issued for minor heirs—H.
(Across face in red ink.)

Homestead entry No. 915, commuted under the 8th section of the act (endorsed on back).

No. 10054. Cash certificate. Land office at Marquette, Michigan. Section- 8 and 9, town. 47, range 1 east.

No. 10054.

RECEIVER'S OFFICE AT MARQUETTE, MICH., *October* 23, 1876.

Received from Samuel F. Bernier, of Chippewa county, Michigan, the sum of ($194.50) one hundred and ninety-four dollars and fifty cents, being in full for the E. ½ of N. E. ¼ sec. 8, S. W. ¼ of N.
259 W. ¼ and lot No. 2 sec. 9, of sec. No. 9, in township No. 47 north, of range No. 1 east, containing 155 acres and sixty-hundredths, at $1.25 per acre.

$194.50.

J. M. WILKINSON, *Receiver.*

PROBATE OFFICE FOR CHIPPEWA COUNTY, MICHIGAN, } *ss:*
Chippewa County,

To all whom this may concern:

This is to certify that the following-named persons are the legal heirs-at-law and the only heirs of Edward Burnier, deceased, to wit, William Burnier, Calixte Burnier, Louis G. Burnier, George E. Burnier, Samuel F. Burnier, Mary C. Burnier, Edward Burnier, Alfred Burnier, Matilda Burnier, Joseph T. Burnier—ten in all; also that Edward Burnier, father of the above-named children, died at Sault Ste. Marie on the 17th day of June, 1876, and that Matilda Burnier, wife of the late Edward Burnier and mother of the aforesaid children, died at Sault Ste. Marie, in said county, on the 5th day of April, A. D. 1872, as fully appears by the affidavits on file in my office, made before me by Louis P. Trempe and Samuel Burnier.

[SEAL.]

THOMAS McKNIGHT,
Judge of Probate.

In the Matter of the Commutation of Homestead Entry No. 915.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

Samuel F. Burnier, of said county, being duly sworn, de-
260 poses and says that the following-named persons are the names of the minor children (his brothers and sister) of the late Edward Burnier. and their ages respectively: Edward Burnier, Jr., age 18; Alfred Burnier, age 16; Matilda Burnier, age 14; Joseph T. Burnier, age 12 years, and that they are the only minor children of Edward Burnier, deceased, and the persons who made the above-named homestead entry No. 915.

SAMUEL F. BURNIER.

Subscribed and sworn to this 27th day of February, A. D. 1877, before me—

[SEAL.] GEO. W. BROWN.

STATE OF MICHIGAN, } ss:
Chippewa County, }

Guy H. Carleton, of said county, being duly sworn, deposes and says that he was well acquainted with Edward Burnier in his lifetime, and that he is well acquainted with his children and their names and ages, and that he has read the foregoing affidavit of Samuel F. Burnier, one of the sons of the said Edward Burnier, giving the names and ages of the minor children of Edward Burnier, deceased, and has good reason to believe and does believe that the same is true, and that he is not in any way related to the family nor interested in the estate of the said Edward Burnier, deceased; that there are four minor children, and that their names and
261 ages are as follows, to wit: Edward Burnier, Jr., age eighteen; Alfred Burnier, age sixteen; Matilda Burnier, age fourteen, and Joseph F. Burnier, age twelve years; and further this deponent saith not.

GUY H. CARLETON.

Subscribed and sworn to before me this 27th day of February, A. D. 1877.

[SEAL.] GEO. W. BROWN.

STATE OF MICHIGAN, } ss:
Chippewa County, }

Louis P. Trempe, of said county, being duly sworn, deposes and says that he was well acquainted with Edward Burnier in his lifetime, and that he is well acquainted with his children and their names and ages, and that he has read the foregoing affidavit of Samuel Burnier, one of the sons of Edward Burnier, deceased, and has good reason to believe and does believe that the same is true; that there are four minor children, and that their names and ages are as follows, to wit: Edward Burnier, Jr., age 18 years; Alfred

Burnier, age 16 years; Matilda Burnier, age 14 years, and Joseph F. Burnier, age 12 years, and that this deponent is not in any way related to said family or interested in the estate of Edward Burnier, deceased, as aforesaid.

LOUIS P. TREMPE.

Subscribed and sworn to before me this 27th day of February, A. D. 1877. GEO. W. BROWN. [SEAL.]

262 Homestead act of May 20, 1862 (8th section).

I, Samuel F. Bernier, one of the heirs of Edward Bernier, deceased, claiming the right to commute under the 8th section of the act of May 20, 1862, the homestead entry No. 915, made by my father upon the E. ½ of N. E. ¼ of sec. 8 and S. W. ¼ of N. W. ¼ of N. W. ¼ and lot No. 2 sec. 9, township 47 N., range 1 east, do solemnly swear that my father, Edward Bernier, deceased, made settlement upon said land on the 20th day of April, 1875, and that before said date, to wit, on the 26th day of August, 1874, he built a house on said land and continued to reside therein up to June 17, 1876, the time of his death, and that I have continued residence and cultivation on said land to the present time, and that I have broken and cultivated about thirty acres of said land. I further swear that I have not heretofore had the benefit of the homestead act, nor abandoned an entry previously made under its provisions.

[Seal Land Office.]

SAMUEL F. BERNIER.

Sworn and subscribed to before me this 2d day of August, A. D. 1876.

GUY H. CARLETON,
County Clerk for Chippewa County.

We, George W. Brown and Boziel Paul, do solemnly swear that we knew Edward Bernier during his lifetime, and do also know Samuel F. Bernier, one of the heirs of said Edward Bernier, deceased, and that Edward was during his lifetime and that
263 Samuel F. Bernier, heir as aforesaid, is a citizen of the United States, and that Edward was and Samuel F. Bernier, heir as aforesaid, is an inhabitant of the E. ½ of N. E. ¼ of sec. 8 and S. W. ¼ of N. W. ¼, lot No. two (2), sec. 9, township 47 N., range one east; that the said Edward Bernier entered upon and made settlement in person on the said land on the 20th day of April, 1875; that he built a house on said land and has lived in said house and made it his home from the 20th day of April, 1875, to the time of his death, June 17, 1876; that Samuel F. Bernier has continued the residence until the present time, and that they have, since said settlement, made the following improvements on said land, to wit, cleared about forty acres of said land and built a frame house thereon of the value of four hundred dollars, and have plowed, fenced, and cultivated about thirty acres, and that this affidavit is taken before the county clerk for the county of Chippewa on

account of the great distance to the land office and our inability to go there in person.

[Seal Land Office.]

his
BOZIEL x PAUL.
mark.
GEO. W. BROWN.

Sworn and subscribed to before me this 31st day of July, 1876.
GUY H. CARLETON,
County Clerk for Chippewa County, Michigan.

(Endorsed on back:) Homestead, 8th section, land office at Marquette, Michigan. Proof of settlement. Samuel F. Bernier, E. ½ of N. E. ¼ sec. 8, S. W. ¼ of N. W. ¼ and lot No. 2 sec. 9, town. 47 N., R. 1 E. Cash. No. 10054.

264 *Homestead.*

(Affidavit.)

SAULT STE. MARIE, *April* 13, 1875.

I, Edward Burnier, of Chippewa county, Michigan, having filed my application, No. 915, for an entry under the provision of the act of Congress, approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain," do solemnly swear that I am the head of a family, over twenty-one years, and citizen of the United States, and that this affidavit is taken before the county clerk of Chippewa county on account of the great distance to the land office and my inability to go there in person; that said application, No. 915, is made for the purpose of actual settlement and cultivation; that said entry is made for my own exclusive benefit, and not directly or indirectly for the benefit or use of any other person or persons whomsoever; neither have I heretofore perfected or abandoned an entry made under this act.

his
EDWARD x BERNIER.
mark.

Witness:
ASHBELL B. ROACH.

Sworn and subscribed to this 13th day of April, 1875, before—
[SEAL.] GUY H. CARLETON,
County Clerk, Chippewa County, Mich.

265 *Homestead.*

(Application No. 915.)

LAND OFFICE AT MARQUETTE, MICHIGAN, *May* 24, 1875.

I, Edward Bernier, of Chippewa county, do hereby apply to enter under the provisions of the act of Congress, approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public

domain," the E. ½ of N. E. ¼ of section 8 and S. W. ¼ of N. W. ¼ and lot No. 2 of section 9, in township 47 north, of range one east, containing 155.60 acres.

his
EDWARD x BERNIER.
mark.

Witness:
ASHBELL B. ROACH.

LAND OFFICE AT MARQUETTE, MICHIGAN, *May* 24, 1875.

I, Ambrose Campbell, register of the land office, do hereby certify that the above application is for surveyed lands of the class which the applicant is legally entitled to enter under the homestead act of May 20, 1862, and that there is no prior, valid, adverse right to the same.

AMBROSE CAMPBELL, *Register.*

(Endorsed on back:) No. 915. Homestead application, Edward Bernier, Marquette, Michigan, May 24, 1875, sections 8 and 9, town. 47 N., range 1 E., L. 50400.

266 Receiver's receipt No. 915. Application No. 915.

Homestead.

RECEIVER'S OFFICE,
MARQUETTE, MICHIGAN, *May* 24, 1875.

Received of Edward Bernier the sum of thirteen dollars and eighty-nine cents, being the amount of fee and compensation of the register and receiver for the entry of E. ½ of N. E. ¼ of sec. 8 and S. W. ¼ of N. W. ¼ and lot No. 2 of sec. 9, in township 47 N., of range one east, under the act of Congress, approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain."

$13.89. J. M. WILKINSON, *Receiver.*

Duplicate.

Receiver's receipt No. 915. Application No. 915.

Homestead.

RECEIVER'S OFFICE.
MARQUETTE, MICHIGAN, *May* 24, 1875.

Received of Edward Bernier the sum of thirteen dollars and eighty-nine cents, being the amount of fee and compensation of register and receiver for the entry of E. ½ of N. E. ¼ sec. 8 and S. W. ¼ of N. W. ¼ and lot No. 2 of sec. 9, in township 47 N., of range 1 east, under the act of Congress, approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain."

$13.89. J. M. WILKINSON, *Receiver.*

267 DEFENDANTS' EXHIBIT 7.

This indenture, made this 30th day of March, in the year of our Lord, one thousand eight hundred and eighty-seven, between Calixte Bernier and Mary Bernier, his wife, George Bernier and Sarah, his wife, Louis Bernier and Alice, his wife, Samuel F. Bernier and wife and William Bernier and wife, of the first part, and Hoel D. Rains, all of Sault Ste. Marie, Chippewa county, Michigan, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of ten thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and his heirs and assigns, forever, all that certain piece or parcel of land situate and being in the village of Sault Ste. Marie, county of Chippewa, and State of Michigan, and described as follows, to wit:

A one-half undivided interest, the west ten acres off from the west side of the west half of the southwest quarter of northwest quarter, of section nine, and the east fractional half of the northwest quarter, of section eight, all in township forty-seven north, range one east, making about seventy acres, it being intended to convey all their interests in said above-described lands.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining: To have and to hold the said premises, as above described, with the ap-
268 purtenances, unto the said party of the second part, and to his heirs and assigns forever. And the said parties of the first part, their heirs, executors and administrators, do covenant, grant, bargain and agree to with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, they are well seized of the above-granted premises in fee simple; that they are free from all incumbrances whatever, and that they will, and their heirs, executors, and administrators shall warrant and defend the same against all lawful claims whatsoever, as herein stipulated.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

GEORGE E. BERNIER. [L. S.]
SARAH BERNIER. [L. S.]
SAMUEL F. BERNIER. [L. S.]
VICTORIA BERNIER. [L. S.]
CALIXTE D. BERNIER. [L. S.]
MARY BERNIER. [L. S.]
LOUIS G. BERNIER. [L. S.]
ALICE BERNIER. [L. S.]
his
WILLIAM x BERNIER. [L. S.]
mark.
her
CHARLOTTE x BERNIER. [L. S.]
mark.

Sealed and delivered in presence of—
ALEX. GURNOE.
ALEX. DAY.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

On this 2nd day of March, in the year one thousand eight
269 hundred and eighty-seven, before me, notary public in and for said county, personally appeared Calixte D. Bernier and Mary Bernier, his wife; George Bernier and Sarah Bernier, his wife, and Louis Bernier and Alice Bernier, his wife, and Samuel F. Bernier and Victoria Bernier, his wife, and William Bernier and Charlotte Bernier, his wife, to me known to be the same persons described in and who executed the within instrument, who acknowledged the same to be their free act and deed.

ALEXANDER GURNOE,
Notary Public.

Major heirs of Edward Bernier to Hoel D. Rains.

Received for record the 2d day of April, A. D. 1887, at 2.15 o'clock p. m., and recorded in Liber 19 of Deeds, on page 76.

GEORGE W. BROWN, *Register.*

270 STATE OF MICHIGAN:

Supreme Court. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH T. BERNIER, MARY B. ENDRISS, Matilda B. Endriss, Edward Bernier, and John H. Goff, Defendants.

WAYNE COUNTY, *ss:*

George A. Cady, being duly sworn, deposes and says that he resides in the city of Sault Ste. Marie, county of Chippewa, in said State; that he is thirty-five years of age, and is personally acquainted with Michael Bernier, one of the solicitors for the above-named complainants and appellees, and that upon the 26th day of July, A. D. 1888, at 1.30 o'clock in the afternoon, deponent served on said Michael Brennan, by handing to him personall-, a notice of appeal, of which the annexed is a true copy. Deponent further says that said Michael Brennan was one of the colicitors of record of said complainants in the court below; and further deponent says not.

GEORGE A. CADY.

Subscribed and sworn to before me this 26th day of July, A. D. 1888.

ADAM E. BLOOM,
Notary Public, Wayne County, Mich.

271 STATE OF MICHIGAN:

Supreme Court. In Chancery.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH T. BERNIER, MARY B. ENDRISS, Matilda B. Endriss, Edward Bernier, and John H. Goff, Defendants.

To Messrs. Brennan & Donnelly, solicitors for the complainants and appellees.

GENTLEMEN: You will please to take notice that upon the 17th day of July, 1888, a claim of appeal was filed with the register of the circuit court for the county of Chippewa, in chancery, by which the defendants and appellants Edward Bernier, Matilda Bernier Endriss, and John H. Goff claimed the benefit of appeal to the supreme court from the decree rendered in said cause by the circuit court for the county of Chippewa, in chancery, on the 19th day of June, 1888, and that upon the said 17th day of July a bond, as required by the statute, duly approved by the Honorable Joseph H. Steer, circuit judge in and for the county of Chippewa, was filed with the register of said circuit court for the county of Chippewa, in chancery, in his office, in the city of Sault Ste. Marie, in said county of Chippewa.

Dated 26th day of July, 1888.

Yours, etc., GEORGE A. CADY,
Solicitor for Defendants and Appellants.

(Endorsed: Filed Aug. 7, 1888. Chas. C. Hopkins, clerk.)

272 At a session of the supreme court of the State of Michigan held at the supreme court room, in the city of Lansing, on the tenth day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The Honorable Thomas R. Sherwood, chief justice; John W. Champlin, Allen B. Morse, James V. Campbell, Charles D. Long, associate justices.

CALIXTE BERNIER *et al.*, Complainants,
vs.
ALFRED BERNIER *et al.*, Defendants and Appellants.

This cause, coming on to be heard, is argued by John C. Donnelly for complainants and by George A. Cady in part for the defendant-.

Whereupon court adjourned until nine o'clock to-morrow morning.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the foregoing is a true and correct

copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom and of the whole of said original order.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this — day of ——, in the year of our Lord one thousand eight hundred and eighty —.

—— ——, *Clerk.*

273 At a session of the supreme court of the State of Michigan held at the supreme court room, in the city of Lansing, on the eleventh day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The Honorable Thomas R. Sherwood, chief justice; John W. Champlin, Allen B. Morse, James V. Campbell, Charles D. Long, associate justices.

CALIXTE BERNIER *et al.*, Complainants,
vs.
ALFRED BERNIER *et al.*, Defendants and Appellants.

The argument heretofore commenced in this cause is concluded by Mr. George A. Cady, for defendants, and the cause submitted.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom and of the whole of said original order.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this — day of ——, in the year of our Lord one thousand eight hundred and eighty —.

—— ——, *Clerk.*

274 At a session of the supreme court of the State of Michigan held at the supreme court room, in the city of Lansing, on the nineteenth day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The Honorable Thomas R. Sherwood, chief justice; John W. Champlin, Allen B. Morse, James V. Campbell, Charles D. Long, associate justices.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH BERNIER, MARY BERNIER ENDRESS, Defendants, and Matilda Bernier Endress, Edward Bernier, John H. Goff, Defendants and Appellants.

This cause having been brought to this court by appeal of said Matilda Bernier Endress, Edward Bernier, and John H. Goff, three of said defendants, from the circuit court for the county of Chip-

pewa, in chancery, and having been argued by counsel and due deliberation having been had thereon, it is now ordered, adjudged, and decreed by the court that the decree of the said circuit court for the county of Chippewa, in chancery, be, and the same is hereby, as to the said defendants appealing above named reversed and va-c-ted and the bill of complaint dismissed as against them.

And it is further ordered that neither party recover costs as against the other.

275 Supreme Court of Michigan.

CALIXTE D. BERNIER, GEORGE F. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, WILLIAM BERNIER
vs.
ALFRED BERNIER, JOSEPH BERNIER, MARY BERNIER ENDRESS, MATILDA BERNIER ENDRESS, EDWARD NERNIER, and JOHN H. GOFF.

Filed October 19, 1888.

CAMPBELL, *J.*, delivered the opinion of the court:

The bill in this cause was filed by complainants, who were heirs of full age of Edward Bernier when he died in June, 1876, against defendants, who are children or grantees of children not then of age, to settle their common rights under a homestead entry which he made in 1875, and to which, therefore, his title had not become absolute when he died. After his death complainants, on behalf of all of his heirs-at-law, elected to make a pre-emption entry and full payment in advance of the five years, as allowed by the homestead act, and did so in the name of them all. In the General Land Office this was so changed as to make the patent issue to the "monor heirs" only. Complainants do not seem to have noticed this change until shortly before this suit was brought, when, by reason of a sudden advance in value, it was discovered when the property became desirable for sale. A part of the children, who were minors at their father's death, were disposed to acquiesce in complainants' right to share as heirs; the others, when they discovered the condition of affairs, refused to do so. This bill was filed to have a trust declared in complainants' favor to make them share ratably
276 in the land.

John H. Goff, who was grantee of Alfred Bernier, put in a separate answer. Matilda Bernier Endress and Edward Bernier also answered. The other defendants put in no defense and have not appealed from the decree rendered in favor of complainants. Both of these answers claimed the benefit of a cross-bill, but neither of them was signed by the defendants and neither was sworn to. The lack of signature would have been a fatal defect on motion to strike from the files if not waived, as it was waived, by replication. Kimball *vs.* Ward, Walk. Ch., 439. The lack of signature may become important, both as to admissions to be used elsewhere and as to liability for scandal and impertinence, and the defect is not purely formal. The lack of verification seems, however, also to be mate-

rial. As pointed out in Moore *vs.* Cheeseman, 23 Mich., 332, a bill should be verified when it seeks to have settled in equity matters capable of enforcement at law, and it can hardly be allowed, by resorting to an answer instead of a cross-bill, to get rid of a rule which would be applied to such a bill. As the answer itself could not be objected to on any such ground where oath is waived, there is no way to reach this defect except when relief is asked upon it. Possibly a verification might be allowed on the hearing *nunc pro tunc* when no injustice would follow, but rule 123 is positive as to the necessity of an oath. In the present case whatever rights — have are so purely legal that they do not seem to us to be entitled to stand in equity for anything but a defence. They are open to the further objection that by answering separately and by the
277 fact that some defendants did not answer at all the litigation would be split up into several branches if any relief were granted as asked. We do not feel called upon to do more than consider the rights of complainants in the homestead itself as heirs-at-law. This depends on the statute, which, at the time the homestead entry was made as well as when the patent issued, was governed by the Revised Statutes of the United States.

The questions arise under what is now contained in sections 2291 and 2292 of those statutes. The Revised Statutes, being a new act of legislation, cannot be governed by previous legislation where they differ from it. The difference which exists is, however, not much more than a slight change of language and the transfer of a proviso into a separate section.

The conditions on which a homestead entry must be completed, so far as important here, are as follows:

By section 2291 it is enacted: "No certificate, however, shall be given, or patent issued therefor, until the expiration of five years from the date of such entry; and if at the expiration of such time, or at any time within two years thereafter, the person making such entry; or if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee in case of her death," upon proper proof shall be entitled to a patent.

Section 2292 provides as follows: "In case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of such infant child or children; and the executor, administrator, or guardian may, at any time within two years of the
278 death of the surviving parent, and in accordance with the laws of the State in which such children, for the time being, have their domicile, sell such land for the benefit of such infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States on the payment of the office fees and sum of money above specified."

There is apparently no authority for issuing a patent under this section directly to the minor heirs, but on the argument it was conceded that if they were the only persons for whom the homestead

interest could have been enforced the complainants could not question the patent, and this does not seem to be material.

Some reference was made on the argument to congressional debates, but they cannot be much, if at all, regarded on matters of verbal construction. The language used must be given effect if it has any consistent meaning, and it is matter of familiar knowledge that members voting for a bill do not always act on the same understanding. A bill must be separately acted on by both Houses and approved by the President, and it would be contrary to experience to assume that all three must have acted on absolutely identical information and views.

On examining the section 2291 on which the rights of the general heirs are based, it will be seen at once that this section does not treat the land as heritable, but makes the estate go by designation of persons. If there is a widow the heirs take nothing. She may not be the mother of the heirs or of any of them, but she ab-
279 solutely and completely bars them out. This of itself indicates that the homestead has more reference to actual family occupancy than to inheritance, which may or may not coincide with family residence. We cannot therefore assume that any particular significance attaches to heirship. Children, if there are any, are heirs, but collaterals take where there are no children, and where therefore the home has ceased to exist. So even minor and dependent children of an earlier marriage must give way to the second wife, and be cut off if she survives. No consideration of supposed equity can save them. The language of the law is not open to ambiguous construction.

The next section 2292 by its language covers every case where there are minor children surviving both parents, and in terms gives them the entire estate. In order to graft a qualification on it we must assume that the heirs general are by the previous section made favorite and universal successors; but this, as already seen, is not the case, and even children are cut off where the hardship is manifest. Section 2292 does not stop with the general terms in favor of minors, but gives directions how their interests are to be saved quite inconsistent with the idea of any other participants. It contemplates that a sale may be made by the personal representative or guardian. This sale is not of an undivided interest in the land but of all the land. In the present case, for example, the heirs of full age might not have cared to prove up their homestead right or to commute it by purchase. Had they seen fit to proceed
280 on their own behalf alone, if entitled at all, they could have obtained only an undivided share; but there is no act of Congress allowing undivided interests to be granted either to homesteaders or pre-emptioners. The same difficulty would have attached to any effort to save an undivided share for the minors.

It is very easy to see that this legislation is in some respects imperfect; but we do not think the language of section 2292 is consistent with giving the minors any less than the whole estate.

The fact that the Land Department has so construed the law would not bind the courts if contrary to the evident meaning of the

language; but the language cannot be construed differently without straining its meaning, and the fact that the construction of the office has been not only uniform but long continued, and if inconsistent would probably have led to further legislation to remove the wrong if deemed a wrong, is of some significance on that account as well as for its reason.

In our opinion the complainants made out no case and the bill should have been dismissed; but we are not prepared to say that the case is not one where they had reasons justifying them in seeking to have the doubts settled. We are disposed, in reversing the decree as to the appealing parties and dismissing the bill as against them, to leave parties to pay their own costs.

The other justices concurred.

281 STATE OF MICHIGAN, } ss:
County of Wayne, }

Lawrence F. Bedford, being duly sworn, doth depose and say that he served a true copy of the foregoing citation on George A. Cady, Esq., solicitor for the defendants Edward Bernier, Matilda Bernier Endress, and John H. Goff, by delivering the same to him personally at his office in Sault Ste. Marie, Michigan, on the fifth day of November, A. D. 1888.

LAWRENCE F. BEDFORD.

Subscribed & sworn to before me this 5th day of November, 1888.

J. W. McMAHON,
Notary Public, Chippewa Co., Mich.

282 The United States of America to Edward Bernier, Matilda Bernier Endriss, and John H. Goff, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Michigan, wherein Colixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier are plaintiffs in error and you are defendants in error, to show cause, if any there be, why a decree rendered against the said plaintiffs in error as in the supreme court of the State of Michigan, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas R. Sherwood, chief justice of the supreme court of Michigan, this 30th day of October, A. D. 1888.

T. R. SHERWOOD,
Chief Justice of the Supreme Court of the State of Michigan.

Oct. 30, 1888.

283 STATE OF MICHIGAN, } ss:
County of Chippewa, }

Lawrence F. Bedford, being duly sworn, doth depose and say that he served a true copy on each of the defendants Edward Bernier, Matilda Bernier Endress, and John H. Goff, by delivering the same to C. W. Dunton, a clerk in the office of John H. Goff and in charge of his business, personally, on the 5 day of November, 1888, and on Matilda B. Endress and Edward Bernier by placing the same in the post office at Sault Ste. Marie, addressed respectively to Whitefish Point and Sault Ste. Marie respectively, with postage fully prepaid.

LAWRENCE F. BEDFORD.

Subscribed & sworn to before me this 5th day of November, A. D. 1888.

CLEMENT C. YERKES,
Notary Public, Chippewa Co., Mich.

284 [Endorsed:] 10051. Supreme court of Michigan. Bernier *et al. vs.* Bernier *et al.* Original. Citation and proof of service. Filed Nov. 13, 1888. Chas. C. Hopkins, clerk.

285 Know all men by these presents that we, Calixte D. Bernier George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier, of Sault Ste. Marie, Chippewa county, and State of Michigan, as principals, and George W. Brown and William Fletcher, as sureties, of the same place, are held and firmly bound unto Edward Bernier, Matilda Bernier Endriss, and John H. Goff, of same place, in the full sum of one thousand dollars, to be paid to the said Edward Bernier, Matilda Bernier Endress, and John H. Goff, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifth day of November, 1888.

Whereas lately, at a session of the supreme court of the State of Michigan, in a suit depending in said court, in which the said principal obligors were complainants and appellees and said obligees were appellants, a decree was rendered against said complainants dismissing their bill of complaint, and said obligors, Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier, having obtained a writ of error and filed the same in the office of the clerk of said court to reverse the decree aforesaid, and a citation directed to the said Edward Bernier, Matilda Bernier Endriss, and John H. Goff, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next (1889).

Now, the condition of the above obligation is such that if the said Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier shall prosecute their said writ
286 of error to effect and answer all damages and costs if they

fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

GEORGE E. BERNIER. [L. S.]
CALIXTE D. BERNIER. [L. S.]
LOUIS C. BERNIER,
SAMUEL F. BERNIER, &
WILLIAM BERNIER,
By JOHN C. DONNELLY,
Their Attorney. [L. S.]
GEORGE W. BROWN. [L. S.]
WILLIAM FLETCHER. [L. S.]

Signed and sealed in presence of—
LAWRENCE T. BEDFORD.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

George E. Bernier and Calixte D. Bernier, as principals to the foregoing bond, and Geo. W. Brown and William Fletcher, as sureties, being duly sworn, doth each for himself depose and say that he is a resident and freeholder of the county of Chippewa and State of Michigan and is possessed of property of the value of over one thousand dollars over and above all incumbrances, indebtedness, and exemptions from sale on execution and all liability on other similar bonds, and that he has signed the foregoing bond.

Subscribed and sworn to before me this 5th day of November, A. D. 1888.

CLEMENT C. YERKES,
Notary Public, Chippewa Co., Mich.

I hereby approve the foregoing bond.
Nov. 8, 1888.

T. R. SHERWOOD, *Ch. Justice.*

(Endorsed:) Filed Nov. 13, 1888. Chas. C. Hopkins, clerk.

287 Know all men by these presents, that we, Calixte D. Bernier, George E. Bernier, Louis C. Bernier, Samuel F. Bernier, and William Bernier, of Sault St. Marie, in the county of Chippewa and State of Michigan, as principals, and George W. Brown and William Fletcher, as sureties, are held and firmly bound unto James H. McKenney, clerk of the Supreme Court of the United States, in the full and just sum of two hundred dollars, current money of the United States, to be paid to the said James H. McKenney, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifth day of November, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at a session of the supreme court of the State of

Michigan, in a suit depending in said court between Calixte D. Bernier, George E. Bernier, Louis C. Bernier, Samuel F. Bernier, and William Bernier, complainants and appellees, and Edward Bernier, Matilda Bernier Endriss, and John H. Goff, as appellants and defendants, a decree was rendered against the said Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Birnier, and the said Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier having obtained a writ of error to remove the said cause to the Supreme Court of the United States and filed a transcript of the record of said court in said cause in the office of the clerk of the Supreme Court of the United States to reverse the decree in the aforesaid suit:

Now, the condition of the above obligation is such that if the said obligors shall well and truly pay or cause to be paid to the said James H. McKenney, his heirs, executors, administrators, or assigns, all such fees as shall accrue to him, the said James H. McKenney, clerk as aforesaid, and charged to the said Calixte
288 D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier in the prosecution of the said writ of error, then the above obligation to be void; otherwise to remain in full force and virtue.

GEORGE E. BERNIER. [L. S.]
CALIXTE D. BERNIER &
LOUIS C. BERNIER,
SAMUEL F. BERNIER &
WILLIAM BERNIER,
By JOHN C. DONNELLY,
Their Attorney. [L. S.]
GEO. W. BROWN. [L. S.]
WILLIAM FLETCHER. [L. S.]

Signed, sealed, and delivered in the presence of—
LAWRENCE F. BEDFORD.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

George E. Bernier and Calixte D. Bernier, as principals to the foregoing bond, and Geo. W. Brown and William Fletcher, as sureties, being duly sworn, doth each for himself depose and say that he is a resident and freeholder of the county of Chippewa and State of Michigan and is possessed of property of the value of over one thousand dollars over and above all incumbrances, indebtedness, and exemptions from sale on execution and all liability on other similar bonds, and that he has signed the foregoing bond.

Subscribed and sworn to before me this 5th day of November, A. D. 1888.

CLEMENT C. YERKES,
Notary Public, Chippewa Co., Mich.

289 I hereby approve the foregoing bond.
8th Nov., 1888.

T. R. SHERWOOD,
Chief Justice.

[Endorsed:] 10061. Filed Nov. 13, 1888. Chas. C. Hopkins, clerk supreme court.

290 The Supreme Court of the United States.

CALIXTA D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, Samuel F. Bernier, & William Bernier, Complainants and Plaintiffs in Error,

vs.

MATILDA BERNIER ENDRISS, EDWARD BERNIER, and JOHN H. GOFF, Defendants and Appellants in the Supreme Court of Michigan, Impleaded with Alfred Bernier, Joseph Bernier, and Mary Bernier Endress, Defendants Who Did Not Appeal from the Decree of the Circuit Court in the County of Chippewa, in Chancery.

Now comes the said complainants and plaintiffs in error and say that the supreme court of the State of Michigan was in error in its judgement and decree in said cause as follows, to wit:

1. The said court erred in reversing the decree of the court below and dismissing complainants' bill of complaint as to the defendants Edward Bernier, Matilda Bernier Endress, and John H. Goff.

2. The said court erred in holding and deciding that the said complainants were not the equitable owners each of an undivided one-tenth interest in the lands and premises described in the bill of complaint and in holding and deciding that defendants were the entire owners thereof.

3. The said court erred in holding and deciding that the minor children of Edward Bernier, deceased, succeeded to all of the interest of said Edward Bernier in the lands in controversy, and that
291 the major children, who were the complainants, had no interest, legal or equitable, in said lands.

4. Because the said supreme court erred in holding and deciding that under the provisions of section 2292 of the Revised Statutes of the United States the said complainants as major children of Edward Bernier, deceased, acquired no interest in the homestead lands described in the bill of complaint, and that the sole title thereto vested in the minor children.

JOHN C. DONNELLY,
Solicitor for Complainants and Pl'ffs in Error.

292 STATE OF MICHIGAN, } ss:
County of Wayne, }

Alexander Munro, being duly sworn, deposes and says that he is a stenographer in the office of John C. Donnelly, attorney for the plaintiffs in error in the foregoing-entitled cause; that on the 24th

day of June, A. D. 1889, he mailed to George A. Cady, Esq., at Sault Ste. Marie, Michigan, a duplicate of the foregoing assignment of error, said Cady being solicitor for the defendants Matilda Bernier Endress, Edward Bernier, and John H. Goff, defendants in error. Said copy was enclosed in an envelope, duly sealed and addressed to said Cady at Sault Ste. Marie, Michigan, and the postage thereon fully prepaid, and the same deposited in the post office at Detroit. Further deponent sayeth not.

ALEXANDER MUNRO.

Subscribed and sworn to before me this 24th day of June, A. D. 1889.

STEWART O. VAN DE MARK,
Notary Public, Wayne County, Michigan.

293 [Endorsed:] 10051. Supreme Court of the United States. Bernier *et al. vs.* Bernier *et al.* Assignment of error. Filed June 25, 1889. Chas. C. Hopkins, clerk. John C. Donnelly, solic'r for compl'ants and def'ts in error.

294 10051.

Parties.	Plaintiffs' attorneys.	Defendants' attorneys.
Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, & William Bernier, complainants, *vs.* Alfred Bernier, Joseph Bernier, Mary Bernier Endress, defendants, and Matilda Bernier Endres, Edward Bernier, and John H. Goff, defendants & appellants.	Brennan & Donnelly. Appeal from Chippewa. In chancery.	George A. Cady.

Costs.	Journal.	Date.	Proceedings.
		1888.	
		Aug. 2	Record on appeal filed.
		" 7	Proof of notice of appeal filed.
		" 30	Note of argument filed.
	I, 184	Oct. 10	Argued in part.
	" 185	" 11	Concluded and submitted.
	" 207	" 19	Reversed and dismissed as to appellants without costs to either party.
		" 30	Writ of error from Sup. C't U. S. filed. Allowed by Sherwood, C. J.
		Nov. 13	Citation with proof of service filed.
		" "	Bond to adverse party & to clerk Sup. C't U. S. filed.
		1889.	
		June 25	Assignment of errors in Sup. C't U. S. filed.
		Aug. 6	Record transmitted to Sup. C't U. S., Washington.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of the calendar entries in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom and the whole of said original.

Seal of the Supreme Court of Michigan, Lansing.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this sixth day of August, A. D. 1889.

CHAS. C. HOPKINS, *Clerk.*

295 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings and also in the rendition of a decree in a suit before you in which Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier were complainants and appellees and Alfred Bernier, Joseph Bernier, Mary Bernier Endriss, Matilda Bernier Endriss, Edward Bernier, and John H. Goff were defendants and Edward Bernier, Matilda Bernier Endriss, and John H. Goff, of said defendants, were appellants, you being the highest court of law or equity of said State of Michigan in which a decision could be had in the said suit, wherein was drawn in question the construction of a statute of the United States, viz., chapter five (5) of the Revised Statutes of 1878 of the United States, being the United States homestead law, and especially sections 2291 and 2292 of said Revised Statutes, and the decision was against the right and title of said complainants, set up and claimed thereunder in their said bill of complaint, to the ownership of the undivided one-tenth part each of the lands described as heirs-at-law of Edward Bernier, deceased, who had made a homestead entry under said homestead law and died before the completion of his said entry, a manifest error hath happened, to the great damage of said complainants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do
295½ command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that

error which of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 30th day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

[Seal of the Circuit Court, Eastern District of Michigan.]

WALTER S. HARSHA,
Clerk Circuit Court of United States for Eastern District of Michigan.

JOHN C. DONNELLY,
Attorney for Plaintiffs in Error.
MICHAEL BRENNAN, *Of Counsel.*

296 Let the foregoing writ of error be signed and issued as prayed for in the petition hereto attached.

Oct. 30, 1888.

T. R. SHERWOOD,
Chief Justice of the Supreme Court of Michigan.

To the Supreme Court of the United States:

The execution of the foregoing writ appears by the transcript of record hereto annexed.

Lansing, Mich., Aug. 6, 1889.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

297 To the Honorable Thomas R. Sherwood, chief justice of the supreme court of the State of Michigan:

The petition of Colixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier respectfully shows—

1. That they are complainants in a cause commenced in the circuit court for the county of Chippewa, in chancery, in this State, against Alfred Bernier, Joseph Bernier, Edward Bernier, Mary Bernier Endriss, Matilda Bernier Endriss, and John H. Goff, as defendants, which said cause proceeded to decree in said circuit court, in chancery, in favor of complainants; that thereupon the defendants Edward Bernier, Matilda Bernier Endriss, and John H. Goff took an appeal from said decree to this court, which is the final court of appeal in this State.

2. That the right claimed by said complainant- and set forth in their bill of complaint filed in said cause was substantially as follows, to wit: Edward Bernier, father of said complainant-, made a homestead entry upon the lands described in the bill of complaint under and according to the provisions of chapter five (5) of the Revised Statutes of the United States for 1878, and being chapter eight (8) of existing land laws of the United States as codified under authority of Congress, said homestead entry being made in April, 1875; that in June, 1876, said Edward Bernier died leaving no widow, his

wife having died some years previously; that complainants,
298 who were all over twenty-one (21) years of age at the time of his death, and the defendants Alfred Bernier, Joseph Bernier, Mary Bernier Endriss, Matilda Bernier Endriss, and Edward Bernier, infants under the age of twenty-one (21) years, were his children, and that under the provisions of said homestead law all of said children as his heirs-at-law succeeded to the said homestead and became and were entitled to a patent therefor, but that the United States by a mistaken construction of said homestead law issued the patent to the infant children only—who are defendants, as above stated—in violation of rights of complainants, who are entitled to be named as grantees in said patent along with said infant children; that the bill of complaint was filed to have the interests of said complainants established and said infant children declared to be trustees for all of the heirs.

3. That said appeal was duly heard in said supreme court and the decision and decree of said supreme court was against the right and title set up and claimed by complainants, said court entering a decree dismissing complainants' bill of complaint.

Therefore your petitioners respectfully request that you endorse hereon or on the draft of a writ of error hereto attached an order allowing the issuing of a writ of error to remove the record of said cause to the Supreme Court of the United States for review in accordance with the provisions of section 709 of the Revised Statutes of the United States of 1878; that a citation may issue under your signature directed to said defendants as required by the rule.

And your petitioners will ever pray, etc.

CALIXTE D. BERNIER,
GEORGE E. BERNIER,
LOUIS G. BERNIER,
SAMUEL F. BERNIER,
WILLIAM BERNIER,
By JOHN C. DONNELLY,
Their Attorney-in-Fact.

299 [Endorsed:] # 10051. Filed Oct. 30, 1888. Chas. C. Hopkins, clerk supreme court.

300 STATE OF MICHIGAN:

The Supreme Court.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, and WILLIAM BERNIER, Complainants,
vs.
ALFRED BERNIER, JOSEPH BERNIER, MARY BERNIER ENDRISS, Defendants, and Matilda Bernier Endriss, Edward Bernier, and John H. Goff, Defendants and Appellants.

STATE OF MICHIGAN, *In the Supreme Court,* } *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the above and foregoing is a true

and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court, as appears of record and on file in my office; that I have compared the same with the original and it is a true transcript therefrom and of the whole thereof; that attached thereto are the writ of error with allowance endorsed thereon, the citation with proof of service, a copy of the bond to the adverse party, filed with the writ of error, the bond to the clerk of the Supreme Court of the United States, duly approved, and the assignment of errors by the plaintiff in error in the Supreme Court of the United States; that at the time the said writ of error was served upon me there was lodged with me for the adverse party a copy of such writ.

Seal of the Supreme Court of Michigan, Lansing.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this sixth day of August, A. D. 1889.

CHAS. C. HOPKINS,
Clerk of the Supreme Court of Michigan.

Endorsed on cover: Case No. 13,655. Michigan supreme court. No. 102. Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier, plaintiffs in error, *vs.* Edward Bernier, Matilda Bernier Endriss, and John H. Goff. Filed September 25, 1889.

147 U.S. 242

Office Supreme Court U. S.
FILED.
NOV 26 1892
JAMES H. McKENNEY,
CLERK.

CASE NO. 13,655.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. 102.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, AND WILLIAM BERNIER, PLAINTIFFS IN ERROR,

vs.

EDWARD BERNIER, MATILDA BERNIER ENDRISS, AND JOHN H. GOFF.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

Brief of JOHN C. DONNELLY,
Counsel for Plaintiffs in Error.

and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court, as appears of record and on file in my office; that I have compared the same with the original and it is a true transcript therefrom and of the whole thereof, that attached thereto are the writ of error with allowance endorsed thereon, the citation with proof of service, a copy of the bond to the adverse party, filed with the writ of error, the bond to the clerk of the Supreme Court of the United States, duly approved, and the assignment of errors by the plaintiff in error in the Supreme Court of the United States; that at the time the said writ of error was served upon me there was lodged with me for the adverse party a copy of such writ.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this sixth day of August, A. D. 1880.

Seal of the Supreme Court of Michigan, Lansing.

CHAS. C. HOPKINS,
Clerk of the Supreme Court of Michigan.

Endorsed on cover: Case No. 13,655. Michigan supreme court. No. 102. Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier, and William Bernier, plaintiffs in error, *vs.* Edward Bernier, Matilda Bernier Endress, and John H. Goff. Filed September 25, 1880.

147 U.S. 242

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

CASE NO. 13,655.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. 102.

CALIXTE D. BERNIER, GEORGE E. BERNIER, LOUIS G. BERNIER, SAMUEL F. BERNIER, AND WILLIAM BERNIER, PLAINTIFFS IN ERROR,

vs.

EDWARD BERNIER, MATILDA BERNIER ENDRISS, AND JOHN H. GOFF.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

Brief of JOHN C. DONNELLY,
Counsel for Plaintiffs in Error.

Supreme Court of the United States.

October Term, 1892.

CALIXTE D. BERNIER,
GEORGE E. BERNIER,
LOUIS G. BERNIER,
SAMUEL F. BERNIER, and
WILLIAM BERNIER,
Plaintiffs in Error,

vs.

EDWARD BERNIER,
MATILDA BERNIER ENDRISS, and
JOHN H. GOFF,
Defendants in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

FACTS.

On May 24, 1875, Edward Bernier made a homestead entry on the lands in controversy under the provisions of the Federal Homestead Law. He occupied the land as such homestead until his death June 17, 1876.

At the time of the entry Edward Bernier was a widower, his wife having died April 5, 1872.

He left surviving him ten children, of whom five were over twenty-one years of age and are the complainants in this case, and five under twenty-one years of age, and with John H. Goff are the defendants in the case.

The names of complainants are Calixte D. Bernier, George E. Bernier, Louis G. Bernier, Samuel F. Bernier and William Bernier, and

of defendants Edward Bernier, Alfred Bernier, Joseph T. Bernier, Mary Bernier, now Mary Bernier Endriss, Matilda, now Matilda Bernier Endriss, and John H. Goff, who becomes such by reason of having had transferred to him by quitclaim deed the interest of Alfred Bernier some time prior to bringing of suit. The deed is dated December 3, 1885.

Joseph Bernier, before suit, conveyed his interest to the defendant, Mary Bernier Endriss, his sister, and filed a disclaimer. She, representing both his and her own share, both before and after suit, was willing to divide the property on the basis claimed by complainants, and has permitted decree against her by default.

On October 23, 1876, some four months after Edward Bernier died, Samuel F. Bernier, one of the adult heirs, on behalf of all ten heirs, made the necessary proof for the commuting of the homestead entry, paid the minimum price for the land and received the certificate entitling him to a patent therefor.

See Test. Samuel Bernier, Rec., pp. 61–64.
Ex. 6, Rec., pp. 143–149.

This certificate was never canceled, nor was any notice of contest, suspension or claim of irregularity ever given.

No other proof of occupation or improvement was ever made, nor was any other or further sum paid for the land than was paid by Samuel F. Bernier, on behalf of all the heirs.

Some time in April, 1877, a second certificate was issued to the "minor heirs of Edward Bernier, deceased," based upon the commutation proof made by Samuel F. Bernier.

See certified copy of Land Office records, on file, Def'ts Ex. 6, pp. 143–149.

April 25, 1877, a patent was issued to "the minor heirs of Edward Bernier, deceased." This was without the knowledge or consent of any of the heirs, and they all remained in ignorance of it until the defendant Goff bought the interests of Alfred in the winter of 1885–6.

See Test. of Geo. Bernier, Rec., p. 40.
See Test. of Samuel Bernier, Rec., pp. 62, 63, 69, 70.
See Test. of Mary Endriss, Rec., pp. 72, 76.
See Test. of Edward Bernier, Rec., p. 89.

Edward Bernier, one of the defendants, first learned it from Goff in December, 1885.

Record, p. 189.

The property was always treated as a part of the general estate of Edward Bernier, deceased, to be divided equally between all the heirs. (Test. Edward Bernier, p. 90.)

It was assessed to the estate of Edward Bernier, deceased, from the time of his death until 1885 inclusive.

Rec., pp. 134 and 135.

By virtue of an understanding between all the heirs, George E. Bernier was to take charge of the whole estate, including therein the land in question, pay taxes and take care of the minors.

Rec., p. 122.

He went into and remained in possession of the land in controversy until this suit was brought.

All parties claim title through a common source, viz., the homestead entry of Edward Bernier, deceased, and the commutation proceedings by Samuel Bernier.

After the mistake in the issuing of the patent was discovered, the defendants, Edward and Matilda, assured complainants that it would not alter the right of the parties, and that the property would be divided equally between all the heirs.

Rec., pp. 63 and 64.

So that it appears that the commutation was made by Samuel F. Bernier, and a certificate issued entitling him to a patent in behalf of all the heirs. That without canceling the certificate or giving any notice the government issued a patent to the minor heirs based on the commutation by Samuel.

LAW.

I.

The legislation under which the conflicting claims are made is contained in Sections 1 and 2 of the Act of Congress approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain, which, as amended June 21, 1866, reads as follows:

SEC. 1. Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one-quarter section, or a less quantity of unappropriated public lands, upon which such person may have filed a pre-emption claim, or which may, at the time the application is made, be subject to pre-emption at one dollar and twenty-five cents per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same have been surveyed. And every person owning and residing on land, may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the lands so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

SEC. 2. That the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver, that he or she is the head of a family, or is twenty-one years or more of age, or shall have performed service in the army or navy of the United States, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person or persons whomsoever; and upon filing said affidavit with the register or receiver, and on payment of five dollars when the entry is of not more than eighty acres, he or she shall thereupon be permitted to enter the amount of land specified: *Provided, however*, That no certificate shall be given or patent issued therefore, until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry,

The following properly belongs on page 4 of the brief, immediately following the word LAW :

SPECIFICATION OF ERROR.

The appellants claim that the Supreme Court of the State erred in holding and decreeing that under the second proviso in Section 2 of the act of Congress (hereinafter printed in full), the minor children of Edward Bernier, deceased, succeeded to all his rights in the homestead entry in controversy, and that complainants, who were the adult children of said entry man, took no interest therein, both father and mother being dead.

or, if he be dead, his widow; or in case of her death, his heirs or devisees, or in case of a widow making such entry, her heirs or devisees, in case of her death, shall prove by two credible witnesses, that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he will bear true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided by law: *And provided further*, That in case of the death of both father and mother, leaving an infant child or children under 21 years of age, the right and fee shall inure to the benefit of said infant child or children; and the executor, administrator, or guardian may at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children, for the time being, have their domicile, sell said land for the benefit of said infants, but for no other purpose: And the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States on the payment of the office fees and sum of money herein specified: *Provided*, that until the first day of January, 1867, any person applying for the benefit of this Act shall, in addition to the oath, hereinbefore required, also make oath that he has not borne arms against the United States, or given aid and comfort to its enemies."

This act was further amended in 1877, after the rights of all the parties were fixed, and the amendment of that date does not affect the case, except as showing the main object of the section. The section is cut up into three sections of the Revised Statutes of the United States of 1878, numbered 2290, 2291 and 2292, but the phraseology remains the same, except that the last proviso is dropped in the revision.

The purpose of the act as declared in the title is "To secure homesteads to *actual settlers* on the public domains."

The first section provides:

1. The classes of persons entitled to make an entry on land under the provisions of the act.

2. The quantity of land which any one person may select and the lands from which such selection may be made.

It will be seen that the entry man is required to be:

(*a*) Head of a family, or

(*b*) Twenty-one years of age, and

(*c*) A citizen of the United States, or have declared his intention to become such, as required by naturalization laws: That the lands subject to homestead entry are those subject to pre-emption entry, at a price named.

Section 2 of the act makes provision for the mode of entry and the proof required, on making the entry.

The first proviso to the section provides for the completion of the homestead entry, and the mode and character of the proof, which is greatly different from the entry proofs. The requirements are that the patent may issue on the expiration of five years from the date of the entry, on the person making the entry, proving—

First—Residence on or cultivation of entered lands for the five years immediately succeeding the entry

Second—That no part of the land has been alienated.

Third—Taking the oath of allegiance to the United States.

This proof may be made any time within two years after the five years' occupation required by the act.

II.

The main scope and object of the section is to provide the method of completing the homestead and obtaining a patent therefor, and not to establish a line of descent or a basis of distribution of deceased entryman's estate.

An examination of the section shows that the only purpose of it is to provide for the method of completing the homestead and procuring patent therefor. Its object is to fix the terms and conditions on which a patent shall issue, and the manner of proving a compliance with those terms and conditions, and all other regulations contained therein are subsidiary thereto, and for the minor purpose of more clearly showing how under all probable change of circumstances the title to the homestead shall be perfected, either by the entry man or his successors. This plain and paramount object of the section must be borne in mind when we come to consider the interpretation to be given to the subordinate provisions thereof.

Congress considered that there were contingencies attendant upon the case which should be provided for. The whole act bears evidence

of the supreme test of personal qualification for homesteading, which Congress was insisting on, viz., citizenship, coupled with the oath of allegiance, in the absence of which no patent could issue, and recognizing the necessity for a general rule governing all cases, and with the evident intent of making the requirements of the law bear equally on native born and naturalized citizens alike. Congress required five years' cultivation, or residence on the land, being the exact period required to enable an alien to become a citizen.

In the first proviso the contingency of the death of the homesteader before making final proof was provided for to the effect that if the homesteader be a husband, on his death his widow should succeed him in making proof, and if she dies, then his heirs or devisees, or if it be a widow who makes the entry, her heirs or devisees, in case of her death, shall prove by two credible witnesses that he, she or they have resided upon or cultivated the land for the term of five years immediately succeeding the entry, shall take the oath of allegiance, then in such case he, she or they, if at the time a citizen of the United States, shall be entitled to patent.

It will be seen that this proviso uses the general term "heirs," which must be given its common law meaning, and therefore includes within its scope all the children, both adult and infant, of the entryman, as entitled under it to proceed with the completion of the homestead and the proof of the performance of the conditions upon which the patent would finally issue. It clearly applies to this case, and under it all the children would succeed to the title. The alienation of any part of the land entered before the completion of time, is impliedly if not directly prohibited, showing clearly the legislative intent to be that so long as there are heirs or devisees capable of performing the conditions of the law, the homestead shall be perfected according to the terms of the proviso.

But Congress saw that cases would occasionally arise where, on the death of both parents, none of the heirs could conform to many of the requirements of the law made in the first proviso for the completion of the homestead, and therefore in a second proviso, to it is enacted, "That in case of death of both father and mother, leaving an infant child or children under 21 years of age, *the right and fee* shall inure to the benefit of said infant, child or children, and the executor, administrator or guardian may at any time within two years after the death of the surviving parent, and in accordance with the laws of the

State in which such children for the time being have their domicile, sell said land for the benefit of said infants, but for no other purpose ; and the purchasers shall acquire the absolute title by the purchase and be entitled to a patent from the United States on the payment of the office fees and sum of money herein specified."

The effect of this provision is to make an exception of the class of cases coming within its scope from the general rule laid down in the purview of the act for the proving up and completion of the homestead.

Under it, all proof of occupation or cultivation, non-alienation of land, the taking of the oath of alegiance and citizenship are dispensed with. None of the conditions which all through the law are made important and material, are insisted on in this class of cases. Even the supremely important ones of citizenship and oath of allegiance are not insisted on, and under it an alien infant non-resident my take and sell to a non-resident alien and such alien become entitled to and receive a patent for the land.

This wide departure from the very wholesale and material requirements and conditions made in the purview of the act demands that we should seek for some reason for it consistent with as universal application of the general provisions of the act as the facts will permit, and only bring within the second proviso such cases as cannot be dealt with under the general rules laid down in the body of the act. We must bear in mind that the paramount purpose of the second section is to regulate the mode by which title to the land is acquired by the entryman from the Government, and not to make a law of inheritance or distribution, and that under a well settled rule of construction a proviso of this character is only to be given the effect of providing for cases not coming within the general purview of the act. We conclude that Congress intended thereby to include therein only those cases in which none of the children on whom the succession is cast possess the qualification or can perform the conditions necessary to procure the patent under the general regulations.

III.

The construction of the second proviso contended for by defendants disregards the object and scope of the act and well settled rules of construction. It comes in direct conflict with the general subsidiary provisions in the first proviso as to the succession of the heirs to the father's homestead estate.

But it is contended by defendants counsel that the meaning and purpose of the second proviso is to change the succession to the homestead from the rule laid down in the antecedent provision so as to exclude adult children from all participation therein on the death of the surviving parent when any of the children are under 21 years of age.

To give it that effect is to lose sight of the main purpose of the section and to disregard well settled rules of construction. It would render nugatory the antecedent provisions of the law with reference to the succession to the homestead.

"Upon all acts of the Legislature such construction should be made as that one clause shall not frustrate and destroy, but on the contrary shall explain and support another—sound exposition requiring effect to be given to every significant clause, sentence or word in the Statute."

Smith's Statutory Construction, 710.

"The true meaning of a statute is generally and most properly sought for and ascertained from the purview and body of the act: That is, in construing the words and collecting from them the intention of the Legislature, regard must always be had to the subject matter."

Smith's, 709.

"The intent of the Legislature is not to be collected from any particular expression and any one clause, but from a general view of the whole of an act; and if the Court find, in any particular clause, an expression not so large and extensive in its import as those used in other parts of the act, and upon a view of the whole act it can collect from the more large and extensive expressions used in other parts of the act the real intention of the Legislature, it is their duty to give effect to the larger expressions."

Smith's, 10.

No necessity existed for the declaration in the proviso as to the

rights of children under twenty-one years of age to succeed to the parents' rights. They come within the term "heirs," and would take the estate under the first proviso. But it was necessary to provide for some way in which infant children would get the benefit of the homestead entry and to relieve them from the disability resulting from their inability to perform the conditions set forth in the first proviso, and that was the sole object of the second proviso.

As I have heretofore stated, the law clearly provides the following conditions for homesteading. On making entry the party must be—

First—Twenty-one years or head of a family.

Second—A citizen of the United States, or have declared his intention to become such according to the naturalization laws, and a patent shall only issue on—

Third—Five years' occupation or cultivation.

Fourth—Oath of allegiance.

Fifth—Citizenship of homesteader.

The foregoing rules are founded in a sound public policy, and Congress never intended there should be any departure therefrom except in such cases as show that it was not possible in any way to comply with them.

IV.

The construction of the proviso claimed by defendants would bring about results at variance with the idea upon which they claim Congress acted, i. e., the favoring of infants over all others in the right to succeed to the homestead. It would also result in excluding all adult heirs from participating in the estate of the parent, in the acquisition of which the government had no part, which would greatly exceed in value the naked land, but which could not be separated therefrom, and it would thereby work great injustice.

Counsel for defendants have argued on the theory that the object of section two was to fix the order of succession, and that infants were the object of special care on the part of Congress. But this cannot be so, for the object would often be defeated if the construction for which he contends is given to the second proviso. Take as an illustration a very common case.

A widow homesteads, having minor children; she then remarries, having children by the second marriage; she then dies leaving two

sets of minor heirs. As to those by her first husband she is the surviving parent, and on her death they would succeed to the whole homestead to the exclusion of the minor children of the second marriage, if defendant's contention is correct. The survival of the second husband would exclude his children from succeeding to any share in the homestead. Under the construction contended for by complainants all the children would succeed alike.

While Congress had the power to attach whatever conditions it saw fit to the title, still it is not probable it intended to provide for a different law of descent for this class of property from that applicable to other lands in the State. The moment the homesteader made entry he acquired an interest in the land which in course of time would develop into the absolute title. He makes valuable improvements by clearing it off, and inclosing and cultivating it, by the erection of buildings and other improvements. For seven years he may devote all his efforts to the enhancement of the value of his homestead, and expend thereon all of his accumulations, and it may be the whole and entire estate which he owns.

Valuable buildings and improvements of like character put thereon may represent the greater portion of the value, and under the rules of law would become a part of the realty. Still, if final proofs were not made before the death of the homesteader, the land and improvements would under defendant's claim pass to a child 20 years of age to the exclusion of one 22 years of age.

We therefore contend that the second proviso was intended to apply to cases where none but children under 21 years of age survive the death of the parents.

This was the decision of the Supreme Court of Missouri, in

Crumb vs. Hambleton, 86 Mo., 501,

in which the point was directly involved.

The point that the widow is placed in the first order of succession is not an indication that supports defendant's contention. It has the contrary effect. It is more in line with the theory that Congress desired above all things to put the succession to the homestead in the head of the family, and also no doubt to cover cases where no issue of the marriage existed, and thus prevent the homestead going to strangers. It strongly supports complainant's contention that it was the legislative intent that the completion of the homestead should go on in the usual way so long as any of the homesteader's kin were qualified to com-

ply with the law. *Actual settlers* who resided on, improved and cultivated the land were the objects of the bounty of the government. Such is the declaration in the title, and the context of the act bears out the words of the title. The permanency and good faith of such residence, improvement and cultivation are to be shown by two credible, disinterested witnesses, and that it has continued for five years. We are bound to give these requirements superior weight in the consideration of this question, and to assume that Congress would not permit the patent for the lands to issue without strict compliance therewith, so long as there were heirs or representatives of the deceased entryman qualified to comply with them, and that any exception thereto should arise only from the necessities of the case.

As heretofore stated, the improvements by the entryman may be of great value and really of very much greater market value than the land. If he should fail to make his proof, or should die leaving no child of sufficient age to comply with provisions of the law, the homestead entry would lapse, and with it would be lost the fruit of years of toil, and the accumulations of an economical and thrifty life, as Congress has made no provision for allowing for any improvements on a lapsed entry. The beneficient provisions of the homestead law are no doubt taken advantage of by many whose only capital was the woodsman's ax, a stalwart frame and indomitable courage. But the most desirable class, for settlement on the public domain, is the agriculturalist from the older portions of the country attracted to newer territory by the prospect of increased holding, and bringing with him the accumulations of years, all of which he would expend in the improvement of the homestead, and all of which would revert with the land to the government and be lost on his death, if none of his children could lawfully go on and complete the entry. It is reasonable to assume that Congress had these results in mind when legislating on the subject, and thus we have a reason for providing that in case of infant children surviving both parents the fee should inure to them and the sale of the entry be permitted for their benefit.

No reason can be given for the adoption of the second proviso on the theory that it was for the purpose of preferring the children under 21 years over their adult brothers or sisters in the distribution of the estate of the parents.

The following well settled rules of construction apply in this case: Where the enacting clause is general in its language and objects,

and a proviso is afterwards introduced, that proviso is strictly construed and takes no case out of the enacting clause which does not fall fairly within its terms. In short, a proviso carves special exceptions only out of the enacting clause, and those who set up any such exceptions must establish it as being within the words as *well as the reason thereof.*

United States vs. Dickson, 15 Peters, 165.

It is indispensable to a correct understanding of a statute to inquire first what is the subject of it, *what object is sought to be accomplished by it.* When that is once ascertained a key is found to all of its intricacies; general words may be restrained to it and those of narrower import expanded to embrace it to effectuate the intent. When the intention can be collected from the statute, words may be *modified, altered or supplied*, so as to obviate any repugnancy or inconsistency.

Sutherland on Statutory Const., 218.

And such general purpose of an act is an implied limitation on the sense of general terms, and all subsidiary or minor provisions are to be brought in harmony with such general purpose.

Sutherland, 248.

To keep an act within the limit of its scope and object, and not to *disturb existing law* beyond what that object requires, it is construed as operative *between certain persons, or under certain states of facts or for certain purposes only*, though the language expresses no such circumscription of the field of its operations.

Endlich Statutory Construction, § 137.
Sutherland Statutory Construction, § 218.

And the object and subject of an act may also circumscribe the broad meaning of words by supplying that in the language of the statute which must have been the intention of the same, but has not been expressly stated.

Endlich, § 102.

The true reason for an exception or proviso can only be learned after we have learned the object of the law.

VII.

It was claimed in the State Supreme Court by defendants, that because the pre-emption law did not refer to minor children in fixing the order of succession, but the homestead law did,—therefore Congress intended to give to infant children of the homestead entryman, some special preference. I do not see that such is the proper inference to be drawn from a comparison of the two provisions. The pre-emption law provides for the completion of the entry by the executor, or administrator or an heir, for the benefit of the heirs generally. This could be done without a departure from the general scope and object of the law, and there is nothing in the spirit of the pre-emption law in conflict with it. The pre-emption law is essentially a law for the sale of the public lands at a low price to actual settlers, and the conditions attached thereto can be easily performed. The contrary is the fact as to the homestead laws. No reason exists in the actual condition of things for special regulation as to infants, for the completion of a pre-emption purchase, whereas the requirements of the homestead law are so stringent that infant children can not comply therewith, and therefore the necessity for the provision under discussion.

In short the pre-emption law in general language and by a general provision accomplishes all that the general clause and proviso of the homestead law taken together do.

VIII.

Nor can I see any force in the reference to the provisions of the Soldiers' Homestead law. It is a separate and distinct law, passed ten years after the law under consideration. It is a law more for the giving of additional reward and compensation to the soldier for services rendered, and for the payment of which the government made the provisions of the Soldiers' Homestead act. It is a claim which is recognized as having such a substantial character, that the family of the homesteader is entitled to succeed to it, and though the soldier had never made any claim under it, yet his children might do so, and might after his death take the initial steps themselves. This

right they got because their father was a soldier, and not because he had made a homestead entry or filing. The government in this way recognized that the dependent children of the soldier had a claim as such on it, on account of the services of the father. It is more in the nature of a bounty or pension law (and follows the provisions of the general law on the latter subject, Rev. S., Sec. 4702), and not one simply to dispose of the domain to actual settlers.

The general homestead law is entirely different. Under it an alien who has never rendered any service to the government in any form, and to whom the government owes nothing, may within twenty-four hours after his arrival in the country, on taking the oath of allegiance, make an entry on the public land under its provisions and his children succeed to his rights in an entry actually made because he has thereby obtained some interest in the land.

The scopes and objects of the two laws are so different that they furnish the most conclusive answer to the point made and the conclusions sought to be drawn from a comparison thereof.

An examination of many of the provisions of the Soldiers' and Sailors' Homestead law enforces the idea that the two laws did not have their origin in the same motive or cause, nor were they framed to accomplish the same purpose.

If any inference is to be drawn from a comparison of the provisions of the two laws it is one unfavorable to the defendants. The provision of the Soldiers' Homestead law as to the widow and minor children is clear, specific, and has for its plain purpose the conferring of the benefits of the law on them as such. It is separate and apart from the machinery provided for getting the land. It is not a provision under which infant children are made the successors of their father, in a homestead actually taken up. *It qualifies them to be homesteaders, and as such to get all the benefits of the act.*

There is no corresponding provision in the general homestead law. The provision in Section 2 bears no such relation to the context of the act, or the other parts of the section. The scope and object of the proviso must bear some relation and be confined to the general scope and object of the section. If Congress intended to confer on infant children rights in the land or as homesteaders, superior to their adult brothers and sisters, it would have been done in some such way as in the case of soldiers' children.

IX.

It has been asserted by defendants' counsel that Congress did not have in view title by descent in using the term "heirs" in Section 2. We must assume that Congress had in mind that during the five years' occupation and improvement of the entered land, the entryman would make improvements which must exceed in most instances by five-fold the market value of the land in its unimproved state, and that those improvements would be of such permanent character that they would become a part of the realty. We cannot assume that Congress intended to divert *that* property from the usual line of descent.

X.

It is the uniform current of authority that where the government issues the patent to the wrong person by reason of a wrong construction of the law, a court of equity will review the action of the officer and declare the patentee to be a trustee for the benefit of the parties properly entitled to the land.

A leading case is

Johnson vs. Towsley, 13 Wall. (U. S. Ct.), 82–88.

See also

Sampson vs. Smiley, 13 Wall., 91–92.
Shapley vs. Cowan, 91 U. S., 330.
Steel vs. Smelting Co., 106 U. S., 452.
Quinby vs. Conlan, 104 U. S., 420.

This is also the rule in the State courts.

Nelson vs. Sims, 23 Miss.
Danforth vs. Nomical, 84 Ill., 456
Gibson vs. Chouteaux heirs, 39 Mo., 594.

It is respectfully submitted that the decree of the court below was not in accordance with the rights of the parties, and should therefore be reversed.

JOHN C. DONNELLY,
Counsel for Plaintiff in Error.

147 U.S. 202

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FILED.
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CASE NO. 13,655.

SUPREME COURT

OF THE

UNITED STATES.

CALIXTE D. BERNIER,
GEORGE E. BERNIER,
LOUIS G. BERNIER,
SAMUEL F. BERNIER, and
WILLIAM BERNIER,
Plaintiffs in Error,

vs.

EDWARD BERNIER,
MATILDA BERNIER ENDRESS, and
JOHN H. GOFF,
Defendants in Error.

October Term, 1892.
Term No. 102.

In Error to the Supreme Court of the State of Michigan.

BRIEF OF J. H. GOFF,

For Defendants in Error.

JOHN BORNMAN & SON, PRINTERS, DETROIT.

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JOHN C. DONNELLY,
Counsel for Plaintiff in Error.

147 U.S. 242

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MATILDA BERNIER ENDRESS,
AND JOHN H. GOFF,
Defendants.

October Term, 1892.

Term No. 102.

IN ERROR TO THE SUPREME COURT OF MICHIGAN.

BRIEF OF J. H. GOFF,

Counsel for Defendants.

Edward Bernier, of Chippewa county, Michigan, on the 24th day of May, 1875, made application to the land office at Marquette, Michigan, to enter as a homestead, under the provision of the Act of Congress, approved May 20, 1862, the east half of northeast quarter of section 8, and the southwest quarter of northwest quarter, and lot No. 2 of section 9, in township 47 north of range 1 east.

On the same day the register of the land office certified that the applicant was legally entitled to enter the same

under the homestead act, and that there was no prior valid adverse right to the same, and upon paying the usual fee and compensation, he received the Receiver's receipt therefor, and shortly afterward filed his homestead affidavit. (Record pp. 148–149.)

Edward Bernier died on, or about, the 17th day of June, 1876, about thirteen months after his homestead entry, and left no widow, and left surviving him ten children, of whom five were over 21 years of age, and five were minor heirs.

August 2, 1876, Samuel F. Bernier, one of the major heirs, claimed the right to commute under the eighth section of the Homestead Act, and afterwards filed his own claim and affidavit, and the affidavit of G. W. Brown and Bazile Paul, and the certificate of the judge of probate, showing the heirs-at-law of Edward Bernier, deceased, and October 23, 1876, a receiver's receipt and a register's certificate of purchase were made. (Record pp. 144–145–147.)

The certificate of the register was indorsed, "cancelled new one issued for minor heirs." (Record p. 145.)

February 27th, 1877, said Samuel F. Bernier, one of the major heirs, in the matter of the commutation of Homestead entry No. 915, made affidavit showing who were the minor heirs of Edward Bernier, and affidavits were made by Guy H. Carleton and Louis P. Trempe, substantiating the affidavit of Samuel F. Bernier. (Record p. 146.)

Under date of October 23, 1876, the register of the land office made a certificate of purchase to the minor heirs of Edward Bernier, acknowledging payment for their benefit of $194.50, indorsed as "commuted homestead entry No. 915, under the eighth section of the act." (Record p. 144.)

April 25, 1877, a patent was issued to the minor heirs of Edward Bernier, deceased, of the land in question, indorsed "Minor heirs of E. Bernier, deceased," and was received for record in Chippewa county Register's office

by Geo. W. Brown, Deputy Register of Deeds, June 2, 1877. (Record pp. 121–122.)

The money for the commutation was advanced by Attorney G. W. Brown and his wife. (Record p. 35.)

Subsequently to the issuing of the patent and in 1882, and afterwards, Mrs. Helen C. Brown, wife of G. W. Brown, received a deed of part of the homestead lands, viz.: Lot 2 and the east 30 acres of the southwest quarter of northwest quarter of section 9. (Record p. 34.)

Joseph Bernier, one of the minor heirs, conveyed his interest to his sister Mary, and Alfred Bernier sold his remaining interest to the defendant Goff, in 1885. Record pp. 72–131.) Exhibits L and M.

The Circuit Court for the County of Chippewa in Chancery decreed that the equitable title to the lands in controversy rested in all the heirs of Edward Bernier. (Record p. 26.)

The Supreme Court of the State of Michigan reversed and vacated the decree of the Circuit Court. (Record pp. 153-154.)

There are four assignments of error. (Record p. 161. The substance of all of the assignments is found in the 4th:

4th. Because the said Supreme Court erred in holding and deciding that under the provisions of section 2292 of the revised statutes of the United States the said complainants as major children of Edward Bernier, deceased, acquired no interest in the homestead lands described in the bill of complaint and that the sole title thereto vested in the minor children.

ARGUMENT.

The complainants contend that the patent was issued in violation of their rights and that it should have issued to the heirs of Edward Bernier, and not to the minor heirs.

The leading question in the case is the proper con-

struction of sections 2291 and 2292 of the United States revised statutes. Section 2291 provides that in case of the death of the person making the entry, his widow on making the proofs shall be entitled to a patent, or in case of her death, his heirs or devisee. Section 2292 provides that in case of the death of both father and mother, leaving an infant child or children under 21 years of age the right and fee shall inure to the benefit of such infant child or children.

COMPARISON OF PRE-EMPTION LAW AND HOMESTEAD LAW.

The general plan of the government for a period of many years prior to the enactment of the Homestead Act, was to regard the public domain as a source of revenue, and to be disposed of for cash, and the pre-emption laws were in the same line. They granted the right to purchase for cash at a fixed price in a limited time in preference to others. There was no special provision for minors or devisees in the pre-emption laws. In case of death before the consummation of the claim, the entry is to be made in favor of the heirs of the deceased pre-emptor and the patent thereon shall cause the title to inure to such heirs.

R. S. Section 2269.

The Homestead Law was a marked innovation in the administration of the public land. "Instead of the public lands being sold for cash for profit, or being taken first under the pre-emption system which eventuated in cash purchases they were to be given to actual settlers who would occupy, improve and cultivate them for a term of years, and then receive a patent free of acreage charges."

Public Domain, p. 332.

President Buchanan regarded the homestead bill passed in 1860 as making an unauthorized disposition of

the public land, as giving away what ought to be sold, and that it laid the ax at the root of our present admirable land system.

Public Domain, pp. 344-345.

The above pre-emption section, R. S. 2269, is framed on the general policy of descent of realty in this country, the pre-emption heirs being placed on a footing with those of a cash purchaser. But the homestead law, section 2291 and 2292, provides for widows, heirs, devisees, and infant children, and section 2292 provides that in case of the death of both father and mother, the right and fee shall inure to the benefit of such infant child or children.

It is a maxim that it is not allowable to interpret what has no need of interpretation. It would seem as if that maxim would apply in this case, but if there is any doubt about the meaning of these sections, reference may be had to the original act when necessary to construe doubtful language used in expressing the meaning of Congress. The Court will look to the statutes which have been revised. The old law is a valuable source of information.

United States vs. Bowen, 100 U. S., 508-513.

ORIGINAL SECTION TWO.

SEC. 2. And be it further enacted, that the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is 21 or more years of age, or shall have performed service in the army or navy of the United States, and that he has never borne arms against the government of the United States or given aid and comfort to its enemies, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of

actual settlement and cultivation, and not, either directly or indirectly, for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified. Provided, however, that no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if at the expiration of such time, or at any time within two years thereafter, the person making such entry—or if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee in case of her death—shall prove by two credible witnesses that he, she or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne true allegiance to the government of the United States; then, in such case, he, she or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided for by law. *And provided further, that in the case of the death of both father and mother leaving an infant child or children under 21 years of age, the right and fee shall inure to the benefit of said infant child or children*; and the executor, administrator or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the state in which such children for the time being have their domicile, sell said lands for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and sum of money herein specified.

Public Domain, p. 348.
Act of May 20, 1862.

The clause entitling his heirs, or devisee, to the patent is the general one, but the special case is covered by an express and special provision relating to a specific class of heirs most dependent on the homestead settler and after his death most dependent on the further bounty of the government.

The words, "provided further" restrain and modify the meaning of the preceding language in section two.

In determining the intent of Congress the title of the act may be considered.

Rector, etc., of Holy Trinity Church vs. United States, 12 Sup. Ct. Rep., 513.

The original act is entitled, "An act to secure homesteads to actual settlers on the public domain." The intent and object set forth in the title can be accomplished under the construction contended for by the defendants. Upon the death of the person making the entry in this case, his five children over 21 years of age were entitled each to enter 160 acres, or a total of 800 acres, making five several homes for them.

R. S. Section 2289.

The five infant children could not enter a homestead, and without the benefit of the provision in the statute would have had one-tenth of their father's homestead, and no home. Giving effect to the provision, that in case of the death of both father and mother leaving an infant child or children under 21 years of age, the right and fee shall inure to the benefit of said infant child or children, makes a home for the infant children. Section 2292 is simply the "provided further" in the original section two.

It is clear that if the ten heirs in this case had been all on an equal footing, or were, viz., over 21 years, they would have been entitled to the patent under the designation of "his heirs" under section 2291, and under the same

section had they been all minors they would have been entitled to the patent under the designation of "his heirs." The only necessity for the enactment of section 2292, so far as the right and fee were concerned, was to provide for a case where there were children over and under 21 years, and provide to which class of children the right and fee should inure.

Section 2291 makes the estate go by designation of persons. If there is a widow, the children take nothing. She need not be their mother, and yet bar them out. The terms "heirs" and "infant child or children," and "widow" are terms of description.

Until a title has passed out of the government and vested in a living person, it is not in a situation when any common law rules of descent can apply to it, and Congress may cast the succession upon whom it sees fit. Possibly it is in his case "irregular succession." Irregular succession is that which is established by law in favor of certain persons, or the state, in default of heirs.

Bouvier Law Dict., Title, Succession.

"Succession" is the term used by Commissioner J. M. Edmunds in circular, Oct. 30, 1862.

Section 2292 does not stop with giving the infant children the benefit of the estate, but provides that the administrator or guardian may sell the lands for their benefit and their purchaser be entitled to a patent. The sale is of the land and no undivided interest is contemplated.

DEPARTMENT RULINGS.

The construction given a statute by those charged with executing it is treated with respectful consideration by this Court, and ought not to be overruled without cogent reasons.

U. S. vs. Moore, 95 U. S., 760-764.
Hastings & D. R. Co. vs. Whitney 134 U. S., 357.
Sturr vs. Beck, 133 U. S., 541.

The following decisions throw light on the proper construction of sections 2291–2292.

The Bernier homestead was commuted under the eighth section of the act (Record p. 144), but the homestead character of the filing was in no wise changed by this. It did not thereafter take on the incidents of a pre-emption settlement. The department has ruled that one who commutes a homestead does not thereby exhaust his pre-emption right under the provision section 2261, R. S., which forbids more than one pre-emption filing.

Letter of Commissioner Williamson to R. R. of Cheyenne, Wyoming Territory. Vol. 3, Copp's Land Owner, (Aug. 1876), p. 70, and the same has been ruled by the courts.

Perry vs. Ashby, 5 Neb. 293.
Jarvis vs. Hoffman, 43 Cal., 304.

The commutation of a homestead entry under section 2301 R. S. is not an exercise of the pre-emption right.

Case of James Brittin, 4 Dec. Dept. Int. 441.
Clark vs. Bayley, 5 Oregon, 343.

The payment under the eighth section of the act is simply a commutation of the homestead as allowed by law.

Circular April 20, 1866, Homestead New Series, J. M. Edmunds, Commissioner.
Lester's Land Laws, Vol. 2, pp. 261-268.

The payment being a legal substitution for the continuous labor the law would otherwise exact at his hands.

Lester's Land Laws, Vol. 2, pp. 267-268.

There is certainly nothing in the homestead act indicating that children of full age are more highly regarded than a devisee. In section 2291 the words "his heirs or devisee" occur in immediate connection. The land office

department have, however, uniformly decided that a devise of land embraced in a homestead entry before title has been perfected can have no effect when there are minor orphan children.

Case of George W. Law, March 1880, 6 Copp's Land Owner, p. 100, J. M. Armstrong, Acting Com.
Sarah Leonard's Case, (A. D. 1882) 1 Dec. Dept. Int., 41.
Case of George H. Hudson, Oct. 1875, 2 Copp's Land Owner, p. 99, Burdett, Com.
Peter Kackman's case, (A. D. 1883) 1 Dec. Dept. Int., pp. 86-87.

Secretary Noble, May 9th, 1890, upon receiving the opinion of the assistant Attorney General assigned to his department, decided that on the death of a homesteader leaving adult and minor heirs the title under sections 2291 and 2292 of the R. S. inures to the minors to the exclusion of the adult heirs.

10 Dec. Dept. Int., p. 208.

The assistant Attorney General quotes from a letter of the Commissioner of the General Land Office as follows: "He states that it has been the practice of his office in cases where there are both adult and minor heirs to hold that the title inures to the latter to the exclusion of the former. This practice his law clerks deem to be wrong, and think that 2292 was intended to apply in cases where infant heirs only were found." The assistant Attorney General, quoting the substance of section 2291 and 2292, R. S., says, page 545:

"This language is direct and explicit, leaving little room for doubt as to its meaning. Under section 2291 the heirs of age are entitled to the land in equal shares. But if there be an infant child or children, section 2292 gives the entire right and fee to them alone."

Again:

"When it is remembered that the adult heirs can procure

public lands for themselves, and in their own names, by compliance with the land laws, and that the minor heirs cannot do so, the reason for the distinction is manifest."

"Section 2291 was the first provision of section two of original act, and section 2292 was the second proviso of the same section and act, a proviso upon a proviso, a special exception carved out of the former provisions of the act."

"In the construction of statutes it is a well settled rule that general words or provisos are to be restrained by particular words in a subsequent clause in the same statute, even though the particular intention is incompatible with general intention.

Dwarris 110.

"A provision is something engrafted upon a preceding enactment and is legitimately used for the purpose of taking special cases out of the general enactments and providing specially for them. And even where the provision is repugnant to the purview of the act, the provision will prevail.

"And so when there are in an act specific provisions relating to a particular subject they must govern in respect of that subject as against general provisions in other parts of the statute, although the latter standing alone would be broad enough to include the subject to which the more particular provisions relate."

Endlich on Statutes, 288.

Thus we have the plain language of the statute, the long practice and the decisions of the department, of the Secretary of the Interior, and the able opinion of Assistant Attorney General Shields, in support of the position of the respondents. The act of June 8, 1872, commonly called the Soldiers' and Sailors' Homestead Law, entitles the minor orphan heirs of a soldier or sailor to enter a home-

stead and should be regarded as an unequivocal declaration of the general object and spirit of later legislation touching the public lands.

The constitution of Michigan, in which this land in question is situated, shows also a regard for infant children. It provides: "The homestead of a family after the death of the owner thereof shall be exempt from the payment of his debts contracted after the adoption of this constitution in all cases during the minority of his children."

Article XVI, Sec. 3. 1 Howell's Annotated Statutes, Page 67.

References to brief of plaintiffs' counsel:

The statement of facts of counsel for plaintiffs in error contains some assertions which are controverted, viz.:

1st. That a certificate was issued to Samuel F. Bernier entitling him to a patent in behalf of all the heirs. (Brief p. 3.)

2nd. That the certificate to Samuel F. Bernier was never cancelled. (Brief p. 2.)

3rd. That the patent to the minor heirs issued April 25, 1877, was without the knowledge or consent of any of the heirs, and that they all remained in ignorance of it until the winter of 1885-6. (Brief p. 2.)

4th. The statement that Samuel F. Bernier paid for the land the minimum price. (Brief p. 2.)

Regarding the first statement controverted we say the certificate made to Samuel F. Bernier was to him alone and not in behalf of all the heirs. (Record p. 144.)

Regarding the second statement, that the certificate to Samuel F. Bernier was never cancelled, we say the record shows that it is marked "Cancelled, new one issued for minor heirs."

And in respect to the 3rd statement controverted, that the patent issued without the knowledge or consent of any of the heirs, I contend.

The testimony of complainants' witness, Attorney G. W. Brown, shows that after the death of Edward Bernier, he acted professionally for the heirs and took steps to commute, through Samuel F. Bernier. (Record pp. 32-35.)

Samuel F. Bernier testified that he was notified by Mr. Brown that he had a communication from the land office requiring further proofs. (Record p. 69.)

And further proofs as to the minor children were furnished by him in the shape of affidavits. In his own affidavit he states who the minor children were. The affidavits show only four minor heirs. (Record p. 146.)

The indorsement on the back of the receipt to Samuel F. Bernier shows that the patent was delivered to George W. Brown, June 1, 1887. The patent (record p. 144) was indorsed "Minor heirs of E. Bernier, deceased," and bears the indorsement of the attorney, George W. Brown, who was deputy register of deeds. (Record p. 122.) Mr. Brown testified that the indorsement was in his handwriting. (Record p. 37.)

It would seem from the above that Attorney Brown and Samuel F. Bernier knew about the patent when it was issued. Mr. Brown was especially interested because his wife was to get over thirty acres.

As to the 4th statement, that Samuel F. Bernier paid for the land, the testimony of Attorney Brown, complainants' witness, is that Mrs. Brown paid all that was necessary to get out the patent (record p. 35), and that the amount was never repaid to Mrs. Brown. (Record pp. 38-39.)

In view of the above, it is contended by the defendants that the plaintiffs are strangers to the title, and they cannot be heard to complain. "To charge the holder of the legal title to land under a patent of the United States as a trustee of another, and to compel him to transfer the title, the claimant must present such a case as will show that he himself was entitled to the patent from the government, and that in consequence of erroneous rulings of the officers

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of the land department upon the law applicable to the facts found, it was refused to him. It is not sufficient to show that there may have been error in adjudging the title to the patentee. It must appear that by the law properly administered the title should have been awarded to the claimant." .

Bohall vs. Dilla, 114 U. S., 51.

We submit that the decree of the Supreme Court of the State of Michigan should be affirmed with costs of all the courts.

JOHN H. GOFF,
Counsel for Defendants.